

Summation - Defendant

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1 recovered in the house. Both females
2 testified that there were at least two guns
3 in the house. There were two guns during
4 this entire incident. But two guns were not
5 produced here. There is only one gun that
6 was allegedly found in that house. And with
7 that gun we are not even sure that that gun
8 was used during this incident.
9

10 I submit to you that my client, Zheng
11 Hai Guang, never possessed a gun, never
12 threatened anyone with a gun, and never
13 showed it to either of the females.

14 The two females said that the passenger
15 of the car, Ak Guan, was the one who was the
16 person who had the gun, who pointed it at
17 them when the car was originally stopped near
18 Kennedy Airport. He was the one who then --
19 when Qin Zheng came to the house, he was the
20 one who then gave the gun to the other guy.
21 My client, Zheng Hai Guang, never possessed a
22 gun and never had a gun.

23 In fact, if you remember, he even
24 testified on cross examination that when he
25 was questioning Qin Zheng about making the

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2 phone calls and requesting money, he was
3 threatened with death if he does not continue
4 to partake in this and make those phone calls
5 to request ransom.

6 My client was afraid for his life during
7 this time because he had a gun pointed at him
8 as well as some of the females did. And
9 that's why he did what he had to do. And I
10 ask you to consider that when evaluating the
11 testimony of the two females. There was only
12 one gun found. If my client had a gun,
13 ladies and gentlemen, he would not have
14 gotten rid of it during this incident. It
15 would have either been discovered on him in
16 the car or in the house. It was not. There
17 was only one weapon that was produced during
18 the course of this trial.

19 Mr. Kessler will tell you, and stand up
20 there and tell you, my client had the gun.
21 There would be another simple way for them to
22 confirm that my client possessed that weapon
23 that was produced here. Send it to a
24 laboratory for fingerprinting evidence. Then
25 if that's the gun my client possessed, very

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2 simple, his fingerprints would be on that
3 gun.

4 Ladies and gentlemen, I submit to you,
5 did you hear any evidence that my client's
6 fingerprints were on that weapon? I did not.
7 Let's remember, your memory controls. I
8 submit to you the reason that we did not hear
9 it is my client's fingerprints were not on
10 that weapon. The burden is on the People to
11 prove my client guilty beyond a reasonable
12 doubt. This gives you more reasonable doubt.

13 Now, the People produced this weapon.
14 And you can look at this weapon. But did you
15 hear testimony from anyone that this was the
16 weapon that was used, shown, and displayed to
17 them? The two females took the witness stand
18 during the course of this trial. Neither one
19 of them ever looked at this weapon and said,
20 yes, this was the weapon, the person who held
21 us -- that this was the weapon that was
22 displayed to us. There was no testimony ever
23 from either of the two females that this was
24 the weapon that was used against them.

25 Well, one can argue you know,

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2 Mr. Schecter, you stated earlier that 15
3 months have gone by and people's memory may
4 not be that great. They may not be able to
5 recognize that gun. I submit to you that's
6 correct, but Detective Banks recovered,
7 allegedly recovered, that gun from that
8 apartment the night of the morning of April
9 2nd. The two females were allegedly right
10 there by that basement apartment.

11 There's been no testimony, once again
12 from the witness stand, that he showed the
13 weapon to either of the two females, who at
14 that time on April 1st or April 2nd would
15 have been able to say, yes, this was the gun
16 that was used against us. But, no, there's
17 been no testimony that this was the weapon.
18 Detective Banks never testified that either
19 woman ever identified this weapon as being
20 the one that was used against them.

21 I submit to you, ladies and gentlemen,
22 you cannot speculate this was the weapon.
23 They need real direct evidence pointing to
24 this weapon and saying, yes --

25 MR. KESSLER: Judge, I object to him

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2 instructing the jury what they need, what
3 they don't.

4 THE COURT: Yes, I will instruct the
5 jury.

6 MR. SCHECTER: I submit to you, ladies
7 and gentlemen, consider that when evaluating
8 the testimony of what occurred here, and
9 remember who the burden is on. More
10 reasonable doubt, ladies and gentlemen, when
11 you're considering that.

12 The next point that I'd like to go over
13 with you is the allegations of the rape.
14 Now, in the indictment my client is accused
15 of raping each one of the two females. He's
16 not charged with acting in concert to do
17 these rapes. They specifically said he is
18 the one who did the rapes.

19 Now, the women could be mistaken about
20 the two weapons allegedly used, that my
21 client had a weapon and the other person had
22 weapons, and only one weapon is recovered.
23 What else could they be confused about? Now,
24 my client on the witness stand told you that
25 he was insulted by Detective Ng when he said,

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2 you raped the females. That in his mind the
3 biggest insult of this entire trial is that
4 he was accused of raping these females. And
5 he told you that.

6 With all the remembering that the burden
7 is on the People to prove my client guilty
8 beyond a reasonable doubt, and with all the
9 resources available to the People, it's very
10 simple. Mr. Hickey came in here and said
11 there was spermatozoa and semen found on
12 different parts. What can you do? Very
13 simple. Test it. Test the underwear. Test
14 the spermatozoa. Send it for DNA testing.
15 If it's my client, it's going to come back
16 positive, as being his, you know the genetic
17 traits, and everything will come back that
18 his DNA was found on this. But the People
19 did not do that. They had the burden of
20 proving him guilty beyond a reasonable doubt.
21 They have failed to do that as to these
22 charges.

23 The testing would show conclusively yes
24 or no what my client did or didn't do with
25 the two females. Now, also when dealing with

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2 the medical evidence -- and this all becomes
3 very crucial, the medical evidence. This is
4 what you can really look at, scientific and
5 medical evidence with the gun, fingerprints.

6 But Mr. Hickey, the serologist, what
7 does his report show? What did he state? He
8 said Jin Hao Liu, who was the female who came
9 from the house, the vaginal smears and
10 vaginal swabs tested negative for
11 spermatozoa, because there was no abuser of
12 her. He said what tested positive were
13 panties.

14 As to Liu Yan Wu, the female whose
15 husband was Liu Guo Bang who came from China,
16 her vaginal smears tested her -- excuse me,
17 the vaginal swabs tested positive. Why was
18 that? She testified she had sexual relations
19 with her husband the day before she came from
20 Los Angeles. And that is the reason why the
21 vaginal swab of hers tested positive for
22 spermatozoa. The other female's -- nothing
23 vaginal tested positive for spermatozoa.

24 I submit to you if there had been a
25 rape, Jin Hao Liu's vaginal swab and smear

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1 would have tested positive for spermatozoa.
2 Then Mr. Hickey did state that the panties
3 tested positive for spermatozoa.
4

5 Look, ladies and gentlemen, once again
6 what is missing from that, that the panties
7 tested positive? Did either of the two
8 females during this trial look at either set
9 of panties -- nothing's been produced before
10 you -- and say, these are my panties? Do we
11 know where those panties were gotten?

12 The People have the burden of proving my
13 client guilty beyond a reasonable doubt. And
14 ladies and gentlemen, I submit to you as to
15 the panties, it's very simple. Show the
16 panties to the ladies. Let them say, these
17 were the panties I was wearing that day.
18 Then you will know it. Yes, they test
19 positive. We don't know where these panties
20 came from, or whether they were even the
21 panties the ladies wore from March 31st to
22 April 2nd. We don't know that because
23 there's been no testimony at this trial from
24 either of those two ladies saying that these
25 are their panties. And they never saw the

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2 panties and indicated that these are their
3 panties.

4 Ladies and gentlemen, the People are
5 completely deficient in their burden here of
6 proving the defendant guilty beyond a
7 reasonable doubt as to these charges of rape.
8 I would also submit to you one other thing
9 when dealing with Mr. Hickey's testimony.
10 And the panties would show, allegedly shows
11 spermatozoa. If you remember what he said
12 when I asked him, the underwear, how long
13 would spermatozoa stay on it. He said it
14 could stay on it for months and longer.

15 Now, we don't know where -- did he ever
16 testify that the spermatozoa was fresh or
17 new? He doesn't know when it's from. This
18 could be from months, months ago. But that's
19 what the People would have you convicting on.
20 The People must show that Zheng Hai Guang's
21 intent in these two kidnappings was to abduct
22 the females for ransom on two of the counts.
23 He must show you his intent was to abduct the
24 females to terrorize them; on the other
25 count, his intent was to terrorize, it was to

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abduct them to sexually abuse them.

As to the kidnapping charges as to Liu Guo Bang, I submit to you, you heard him testify. You heard what his descriptions were. My client was five foot six, when my client is five ten. You heard his entire testimony. I submit to you he didn't know what was going on during this entire time.

The money was allegedly delivered to 217 Henry Street. My client stated he didn't know -- obviously he didn't know anyone there. It was Ak Guan and Qin Zheng whose people were located at that address. They were the ones who were to share in the ransom. They were the ones to share in the proceeds of this. My client wasn't to share in the ransom, because he didn't know anyone there. It was not any of his friends who were there, who were to get the money. Zheng Hai Guang was never getting any of the proceeds of the kidnapping.

Yes, I will tell you something. He was getting something much more important to him. He was getting to live and spare the lives of

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2 his family. That's what he was getting out
3 of this incident. But he was not getting
4 anything from an alleged kidnapping or ransom
5 or terrorization or rape. That's what he was
6 not getting. He was getting something more
7 important than money, his life and the life
8 of his parents.

9 When evaluating his intent in the
10 incident, ladies and gentlemen of the jury,
11 you will see that his intent was not to
12 collect ransom, terrorize, or sexually abuse
13 anyone. His intent was to stay alive and
14 keep his family alive.

15 My client took the witness stand. He
16 said, ladies and gentlemen of the jury, and
17 told you what occurred, and the reasons why
18 he did things that occurred. He told
19 Mr. Kessler, this is your chance to get me,
20 prove me guilty beyond a reasonable doubt.
21 Ladies and gentlemen, I submit to you that
22 Mr. Kessler failed to do that when he had the
23 cross examination of Zheng Hai Guang. Zheng
24 Hai Guang's testimony is compelling and
25 sincere.

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2 And I ask you, members of the jury, when
3 you go into that jury room listen to all the
4 evidence that was there. Base your decision
5 on the evidence there. And if you use this
6 in conjunction with the testimony of my
7 client, you would have but one verdict, and
8 that verdict is not guilty. Thank you all.

9 THE COURT: Mr. Kessler.

10 MR. KESSLER: His testimony was
11 compelling and sincere? Did you see this man
12 on the witness stand? That was compelling?
13 That was sincere? That was a joke. Okay.
14 He got on the stand and told you a total
15 fabrication. He was forced to do this
16 kidnapping. He didn't want to do it.

17 You have got to be kidding me. Look at
18 the evidence. The evidence of his guilt in
19 this case is overwhelming. He was caught at
20 the scene red-handed. He was caught with his
21 hand in the cookie jar. What else is he
22 going to say, I was forced to put my hand in
23 the cookie jar? I never wanted to. You have
24 got to be kidding me.

25 Look at the evidence. Look at his words

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2 in this case. At the beginning of this trial
3 I told you the evidence in the case is going
4 to be overwhelming showing his guilt. I told
5 you in this case, as to the kidnapping, he's
6 caught red-handed. Not only did he kidnap
7 these two women, he raped them as well.

8 When you look at this case and you look
9 at the evidence with regard to the first
10 count, let's say the kidnapping for ransom,
11 three witnesses testify they were kidnapped
12 at gunpoint from a car service. The police
13 hear him on the phone asking for the money.
14 The police track down where he is and then
15 see him with his accomplice walking out the
16 door with his two hostages.

17 He kidnapped the women in order to get
18 \$15,000. That's what he demanded. He's
19 caught at the scene by the police, carrying
20 his two females out the door into his car.

21 The Judge is going to give you the law
22 on kidnapping. He is going to tell you what
23 I must prove, every single element, all 8 or
24 9 of them. And he will tell you any legal
25 defenses, anything legal that you must

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2 consider. At no time during his charge will
3 he tell you that he had any legal reason for
4 him as a defense to do this.

5 MR. SCHECTER: Objection, your Honor.

6 THE COURT: Sustained. I will tell the
7 jury --

8 MR. KESSLER: If you have any doubt
9 whatsoever in your mind for one minute that
10 you think to yourself that he was forced to
11 do this and has a legal defense, all you have
12 to do is write the Judge a note --

13 MR. SCHECTER: Objection to legal
14 defense. Objection to the term "legal
15 defense."

16 THE COURT: Sustained.

17 MR. KESSLER: If you think for a moment
18 he was forced to do this, and that that is a
19 reason or justification, then all you have to
20 do is write the Judge a letter and say, was
21 this a legal reason based on the evidence?

22 MR. SCHECTER: Objection.

23 THE COURT: Objection sustained.

24 The jury will listen to the charge and
25 they will know what the law is.

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MR. KESSLER: When you listen to the charge, listen very carefully. And ask yourselves at any point during the charge, is this Judge going to instruct you that based on the testimony here you must consider the defense of duress, that he was forced to do this?

MR. SCHECTER: Objection.

THE COURT: Sustained.

Go to something else, Mr. Kessler.

MR. KESSLER: I'm asking you to decide this case on the law and the evidence, not on speculation, okay, not on guesses or whims, based solely on the law and the evidence. When you do that in this case, his intent -- Mr. Schecter talked about his intent was not to kidnap these women, not to ask for ransom. That's exactly what his intent was. He wanted to hold these women in order to gain money for their release.

He was an active participant. He was not a passive participant. He was an active participant during this kidnapping. He was one of the two people that were there when

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Now, how do you know he is an active participant, not that he is being forced against his will to do this? Because when he is being recorded and taped, look at the words he uses. That tells you about his intent. Look at the words he uses when he doesn't know he is being recorded.

Remember this line. Correct, time is up. You better hurry or else I will sell or bury them. He doesn't say, they will sell or bury them. He says, I will sell or bury them. That shows you his intent. He is an active participant in this kidnapping.

Another line. Now don't be clever
yourself, or I will kill them. Again, not
they or other people will kill them, I will
kill them.

Another line. Now, don't play any foolish games. If you do anything, I have another person over there, and we will kill them.

He is in charge. He's not being forced against his will. He's threatening to kill

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2 these two women and saying, I have even other
3 people here who will kill them.

4 Another line he says -- this is the one
5 that really gets me -- in America there is no
6 such thing as they let people go free if they
7 have received the things.

8 You know, he comes into the country, he
9 tells you, by paying this ransom or
10 something. And now he is telling these
11 people on the phone about what things are
12 like in America.

13 You know, he gets cloaked with this
14 presumption of innocence. He has all these
15 rights, the right to remain silent. These
16 women, when they walked into our County of
17 Queens, they had certain rights too. They
18 had a right not to be kidnapped at gunpoint.
19 They had a right not to be taken to a home
20 away from their loved ones and be raped and
21 terrorized. They have those rights. He
22 violated those rights. He kidnapped them.
23 He raped them. He terrorized them. He held
24 them at gunpoint.

25 He put a gun to one of their heads. He

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1 threatens their loved ones over the phone.

2 If you don't give me \$15,000, I will kill
3 them and bury them. That's a person who is
4 an active participant, who is looking for
5 money.
6

7 Look at the words he uses. Remember one
8 point I asked him, you were concerned about
9 the police listening into this conversation.
10 Well, if he is being forced to do this
11 against his will, what is he worried about?
12 The police want to help them. He is worried
13 about the police. And the one thing, that
14 really is the key. He is worried that some
15 of his money may be robbed, because they're
16 going into a bad neighborhood. He is worried
17 that some of the money he wanted out of this
18 deal going to be taken by someone else. This
19 man is an active participant. He is not
20 passive. He is not forced to do anything
21 against his will.

22 Mr. Schecter asked him, well, did you
23 ever see this guy Ye Guan do anything to
24 scare you? Oh, sure, I saw him say insulting
25 words to Qin ones. That's what he is saying

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that scared him.

Direct and cross examination of his statement. Mr. Schecter spent a lot of time on the defendant's statement. You know, on direct examination Mr. Schecter said to him, well, did you speak to Detective Ng? Yeah, he says on direct. Well, what else did Detective Ng ask you? He said, what happened? Then Mr. Schecter says, well, what did you respond? His response was, I really don't know what happened. That was it. Now we go to cross examination. I asked him the same kind of question. All of a sudden, when I start asking him questions, now he is saying he wouldn't let me speak. He really wouldn't allow me to talk whatsoever.

When you think about this case, think about those two women that you saw walk into this courtroom and in front of you, 14 strangers, stand in this seat, raise their right hand, swear to tell you the truth, speak into this microphone, and tell you about two days of terror for them -- repeatedly being raped, repeatedly being

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1 threatened, forced to speak on the phone.

2 Remember one of them had to speak on the
3 phone. And I was asking the defendant about
4 that. They were saying to their loved ones
5 on the phone, he's getting angry. Listen to
6 what he has to say. He's getting angry.
7 That is a person who is now upset because
8 this kidnapping is now going for maybe less
9 money than he initially planned.

10 Do you really think it was easy for
11 these two women to come into this courtroom
12 and talk about those rapes? Think about that
13 for a second. They have never met any of you
14 before. They walk through that door. They
15 take this witness stand. They sit in this
16 chair and start talking about his penis going
17 into her vagina. Do you think that's an easy
18 task? If you think it's easy, try to stand
19 up in a courtroom and describe your last
20 sexual experience; who it was with, exactly
21 what you did. See how easy that would be for
22 you to do. And that was a consensual
23 experience with someone you cared for. This
24 is ten times tougher.
25

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2 So the bottom line on these women is
3 they come into this courtroom. You have to
4 take their entire testimony and say, is this
5 a person who I believe and is truthful, or is
6 this a deceptive liar who is trying to pin a
7 crime on this defendant?

8 MR. SCHECTER: Objection.

9 MR. KESSLER: Did he not commit --

10 THE COURT: What is the objection?

11 MR. SCHECTER: Deceptive liar.

12 THE COURT: Well, he is asking the jury
13 to infer that, but use other language
14 Mr. Kessler.

15 MR. KESSLER: That is your job with
16 these women. Did they come in here and
17 totally testify falsely about these rapes,
18 meaning the entire incident, or were they
19 telling you the truth? That's for you to
20 decide. I submit to you, you know they were
21 telling you the truth, because you got a
22 chance to look at them, to evaluate them.

23 MR. SCHECTER: Objection.

24 THE COURT: Sustained.

25 MR. KESSLER: Ask yourself -- if these

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2 rapes did not really occur and they are
3 making up the entire incident about the
4 rapes, ask yourselves, why would they? Do
5 you think they get joy coming in here,
6 talking about their vaginas and his penis?
7 Think that's how they get their kicks? What
8 motivation whatsoever do you have before you
9 that would make you believe they are making
10 up this entire incident about the rapes?

11 MR. SCHECTER: Objection.

12 THE COURT: Overruled.

13 MR. KESSLER: I submit to you, they tell
14 you about them being kidnapped at gunpoint
15 and being held for a day and a half for
16 ransom. And witnesses corroborate all of
17 that. The police corroborate that. Police
18 are listening in on those conversations.
19 They come. They tell you they're at the
20 airport. They tell you they were kidnapped
21 at gunpoint, held for over a day and a half.
22 They tell you that this man was one of the
23 kidnappers, that he threatened them, that he
24 was demanding money.

25 All those things are corroborated. Ten

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witnesses testified for the People.

Detective Banks is corroborating the fact they were being held by this man, cause he arrests them right at the scene. Detective Ng overheard the phone conversations. Emily is dealing with him, trying to keep him on the phone as long as possible, so Detective Greene and his crew can finally find him and his detectives can finally find where they're being held. Ask yourselves -- you saw both Liu Yan Wu and Jin Hao Liu testify. Ask yourselves, were these young, shy, quiet 21 year old and 24 year old people, were they manipulative liars who were making up half of this story?

MR. SCHECTER: Objection.

THE COURT: Sustained.

MR. KESSLER: When you talk about some of the other detectives, Mr. Schechter talked about Detective Ng, and that this entire statement is made up. You know, if Detective Ng is going to sit up on the stand and lie and make up this entire statement the defendant never really said, then why not put

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2 in the rapes? You know what I mean? He is
3 already up there lying. Might as well throw
4 that in. In for a penny, not in for a pound.
5 I mean, if he is going to risk his career and
6 his job and commit perjury on the stand and
7 make up this entire statement the defendant
8 stated, then why not throw in the rapes too?
9 And by the way, he also said he committed
10 these rapes and he is sorry.

11 If you remember, Detective Ng recognizes
12 not only defendant's voice, but he tells you
13 he didn't really interview the women before
14 he took the statement from the defendant.
15 And he tells you the first time he learns
16 there are three participants is not from the
17 women or something he knows, but he tells
18 him. He is the first person that tells
19 Detective Ng there are really three people
20 involved in this. Detective Ng said, I
21 didn't know anything about that before.

22 And you know Detective Greene, I submit
23 he did those scratch notes that he had from
24 the two women. He says they're gone now, but
25 remember he took those scratch notes and made

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2 them into a report. Those aren't missing.
3 And that one page of the report we are
4 talking about of these hundreds of pages,
5 that one page of the report doesn't
6 involve -- I asked him -- anything that
7 happens on March 31st, or April 1st. It's a
8 small portion that happens after the arrest.

9 I want to talk a little bit about this
10 thing with the fingerprinting and DNA for--
11 just a moment. You know, this DNA stuff,
12 that's to find people when you have no
13 eyewitnesses, right. If, for example, all of
14 a sudden someone is raped with someone with a
15 ski mask, you have no idea who it is. Okay.

16 Now, we can find DNA, but when you have
17 people who aren't masked, who are in broad
18 daylight, who are with these women for a day
19 and a half, they know exactly who raped them.
20 He did. He raped them. There is semen in
21 their underwear. One of the women still has
22 semen in her vagina. I submit to you based
23 upon that you know these women aren't just
24 fabricating this entire thing about the
25 rapes. Because, one, there is no reason for

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2 them to, and two, what is the semen doing in
3 their underwear and in their vagina? And you
4 know they're correct as to the person who
5 raped them, because he is never wearing a
6 mask.

7 They're with them for two days. He's
8 caught red-handed at the scene, and both
9 women say the taller one, this man, and one
10 of them points him out in the courtroom, is
11 the one who raped me -- along with his
12 accomplice.

13 Can I just see the lineup photo for one
14 second.

15 There is another point to think about.
16 If you ever think for a moment these women
17 made up this entire rape, one of the women
18 came in here and did not identify the
19 defendant. Remember that. Looked around, I
20 don't really see him. And the defendant
21 testifies on the stand. And I asked him, by
22 the way, you have changed a little bit in the
23 15 months, haven't you? Well, you used to
24 have a little beard, your hair is little
25 different.

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2 That's what he used to look like. But
3 you ask yourselves this. If that woman who
4 did not I.D. him is really making up this
5 entire incident about the rape and is
6 vindictive and wants to get him and convict
7 him for a crime he didn't commit, why not sit
8 here, point him out, and say he did it. The
9 fact that she didn't I.D. him increases her
10 credibility.

11 MR. SCHECTER: Objection.

12 THE COURT: Sustained. That's for the
13 jury to decide.

14 MR. KESSLER: Think about it logically
15 for a moment. If she really wasn't raped and
16 she is trying to pin a crime this defendant
17 did not do, point him out.

18 MR. SCHECTER: Objection.

19 THE COURT: Sustained.

20 MR. KESSLER: She did say that the
21 taller of the two. And you can see, remember
22 Qin Guang Zheng is number 6. Defendant is
23 number 5. You can see, substantially taller.
24 They're standing right next to each other.
25 She did tell you the taller one of the two

raped her. She did tell you the taller one was the one in the car driving. She did tell you the taller one of the two then got -- when we were released, was driving and arrested by the police. So we know it's him.

He even admitted himself he was there at that house for those two days. We are not talking about a stranger. Think about facts. Think about the law. Think about the evidence in this case. When you start thinking about all those things, all these witnesses, okay, piece after piece starts coming together.

The evidence is overwhelming showing his guilt. Three different witnesses to the kidnapping. Guo Bang Liu, who testifies he was kidnapped. That's the kidnapping in the second degree the Judge going to charge you with. Not only was he kidnapped for a short amount of time, the two people, women who were with him, were kidnapped as well.

We have ransom demands being heard by the police, by Emily, who testifies she was on the phone. We have the police track down

Summation - People

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2 this cellular phone, and cellular phones were
3 found all over the place; in the apartment,
4 in the car. They tell you they were being
5 held at gunpoint. Guns were found in the
6 place.

7 He is guilty of every single crime
8 charged in this indictment. He kidnapped
9 both women for ransom. He kidnapped Guo Bang
10 Liu for a short amount of time, and held him
11 against his will. He raped both women. He
12 terrorized both women. Not only is he raping
13 them, his accomplice is raping them.

14 These women were in terror. He holds a
15 gun to one of their heads and chokes her.
16 She is worried about her husband. He could
17 care less. Hold him responsible for his
18 actions. He is responsible for the rape.
19 Hold him responsible for the rape. He is
20 responsible for the kidnapping for ransom.
21 Hold him responsible for that.

22 At the end of this case the Judge is
23 going to charge you as to all the law you're
24 to consider in this case. Your lunch has
25 been ordered. Have a sandwich. Discuss this

Jury Charge

1049

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2 case. When you're finished with your lunch,
3 come back into this courtroom and hold the
4 defendant responsible for his actions.

5 MR. SCHECTER: Objection.

6 THE COURT: Sustained. Their lunch
7 hasn't been ordered.

8 MR. KESSLER: Have lunch. Talk about
9 this case among yourselves. Look at all the
10 evidence that's in this case. When you're
11 finished, come back into this courtroom and
12 find the defendant guilty as to each and
13 every count. If you do that, you will be
14 giving this defendant ten times more justice
15 than he ever gave the two women for those two
16 days.

17 MR. SCHECTER: Objection.

18 MR. KESSLER: I have nothing further.
19 Thank you.

20 THE COURT: Ladies and gentlemen, you
21 have now heard all the testimony in this
22 case. You have heard the summations of
23 counsel, and after my instructions to you as
24 to the law involved in this case, you will
25 retire to the jury room for your

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Jury Charge

1050

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deliberations.

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And I shall try to simplify the issues for you as much as I can. I will first give you the general principals of law which are applicable to this and all criminal trials. Then I will analyze the indictment and I'll instruct you with respect to the material and legal principals of law applicable to this particular case, to the crimes involved in this case which the defendant Hai Guang Zheng is charged.

I will explain the application of the law to the facts, and then after everything has been submitted to you for your consideration, you will retire to deliberate and render your verdict as to whether the defendant is guilty or not guilty. I don't intend to summarize the evidence or refer to it to any greater extent than is necessary for my explanation.

Now I will state some of these general principals of law applicable to this and all criminal cases. You have heard them before, but I will repeat them so they will be fresh

Jury Charge

1051

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2 in your mind. Now, you must accept these
3 principals, whether you agree with them or
4 not. You have no discretion to depart from
5 the principals of law I will set forth. For
6 you and I are sitting here together as
7 judges. You are the judges of the facts. I
8 am the judge of the law.

9 Now, the first and most important
10 principal for you to remember is that you are
11 the sole and exclusive judges of the facts in
12 this case. In that capacity you must decide
13 the facts coolly, calmly and deliberately,
14 without fear, favor, prejudice or sympathy.
15 As the sole judge of the facts, it's your
16 sworn duty to decide whether the defendant is
17 guilty or not guilty solely on the evidence
18 admitted during the course of the trial, and
19 to pass judgment on it in determination of
20 all the issues before you.

21 You must not under, any circumstances,
22 indulge in speculation or guesswork, nor are
23 you to consider anything outside of the
24 evidence as you heard it in this courtroom.
25 In other words, don't try to be detectives.

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Jury Charge

1052

Don't try to conjecture what you would do or what should have been done or what might have been done or could have been done.

Your own recollection, understanding, and evaluation of the facts presented by the evidence at this trial is what controls, regardless of what counsel may have said about the facts or what I may even say about the facts. Also you're not to consider anything that I have said during the course of the trial, nor any ruling I have made on an objection by counsel, or anything I may say during the course of this charge, as any indication that I have an opinion on this case. I have none. I have no power to tell you what the facts are, or that one fact is more important than another fact, or that a witness may be truthful or untruthful. These are all matters within your own exclusive power as the judges of the facts.

You are not bound to accept the arguments of the respective counsel. If you find that any argument urged by either of them is reasonable and logical based upon the

Jury Charge

1053

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2 evidence as you recall it, and is consistent
3 with that evidence, you are free to accept
4 that argument as your own and give it that
5 weight which you deem is advisable. On the
6 other hand, if you find that any argument or
7 conclusion is not based on the evidence, or
8 that it is unreasonable, illogical, or
9 inconsistent with the evidence, you may
10 disregard that evidence entirely. ✓

11 As to the law of the case, however, you
12 must not set your own conception or
13 preconceived notions of what the law should
14 be. You must accept the law as I give it to
15 you, without reservation, and you must apply
16 the law as I give it to you for your guidance
17 in determination of the facts in this case.

18 Under our system of juris prudence, all
19 cases in this Court are initiated by way of
20 charges. The charges are contained in the
21 indictment. As I have already stated, an
22 indictment is merely a legal form by which a
23 crime is charged. It is nothing more than an
24 accusation. It has no evidentiary or
25 probative value whatsoever. It is not

Jury Charge

1054

evidence, nor does it prove anything.

Under our system, trials are conducted by taking the testimony of witnesses who are examined by the party calling them under oath directly, and the adverse party then has the right to cross-examine such witnesses after the direct examination is complete. The sworn testimony elicited both on direct and cross examination, plus whatever concessions and stipulations were made during the course of the trial or any exhibits which are received and marked in evidence, is all the evidence that there is in this case. It is only on this evidence that you are to make the final determination of the facts.

Testimony which was stricken from the record, or exhibits which were marked only for identification, and the answers of witnesses which you were instructed to disregard, which were stricken, are to be totally disregarded by you. Each and every one of you see has within his or her power to draw proper reasonable and just inferences from the testimony and to determine the

Jury Charge

1055

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2 probabilities arising from the case after
3 carefully analyzing, weighing, and
4 considering all the testimony of each of the
5 witnesses who has testified during this
6 trial.

7 The defendant is entitled to every
8 inference in his favor which can reasonably
9 be drawn from the evidence. Where two
10 inferences may be drawn from the evidence,
11 one consistent with guilt and one consistent
12 with innocence, the defendant is entitled to
13 the inference of innocence. Other
14 considerations that may cross your minds,
15 such as sympathy or prejudice or bias of any
16 kind, are to be completely disregarded by
17 you.

18 Since you are the exclusive judges of
19 the facts, you have a duty to evaluate the
20 testimony. It's your duty to determine the
21 credible testimony and to disregard any
22 testimony which is not credible.

23 Now, you recall the following witnesses
24 testified before you: Guo Bang Liu, Jin Hao
25 Liu, Liu Yan Wu, Jin Zho Liu, Dr. Howard

Jury Charge

1056

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2 Kurtz, Thomas Hickey, Detective Michael
3 Greene, Detective Kevin Streine, Detective
4 Keith Ng, Detective Steven Banks, and the
5 defendant, Hai Guang Zheng. One of your
6 chief functions is to determine the
7 credibility of the witnesses, because the
8 facts depend upon the testimony of witnesses.
9 You alone have the power to say whether a
10 witness is truthful or untruthful and what
11 weight you should give to his or her
12 testimony. ✓

13 In determining the credibility of any
14 witness, you should apply the same tests that
15 you use in your everyday activities at home
16 or at work, and draw from your life
17 experiences. For example, you should
18 consider the personality and background of
19 the witness, the demeanor of the witness on
20 the witness stand, the reasonableness or
21 unreasonableness of the testimony, the basis
22 for the testimony, the opportunity that a
23 witness had to observe the situation about
24 which he or she testified, whether the
25 testimony is supported or contradicted by

Jury Charge

1057

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2 other evidence, the interest or lack of
3 interest of the witness in the outcome of the
4 case, the motive to tell the truth or not to
5 tell the truth, the probability or
6 improbability of the testimony, and any other
7 tests which you have in determining whether a
8 witness is or is not telling the truth.

9 You have heard the witnesses in this
10 case; you have heard them examined and
11 cross-examined. And in deciding this case,
12 you will consider their testimony just as if
13 you had heard it outside of this courtroom.
14 There is no rule that a jury has to adopt any
15 special test to determine credibility.

16 If you find that any witness has
17 willfully testified falsely as to any
18 material fact, the law permits you to
19 disregard the entire testimony of that
20 witness upon the principal that one who
21 testified falsely about one material fact is
22 likely to testify falsely about everything.
23 You are not required, however, to totally
24 disregard the testimony of such a witness.
25 You may accept so much of the testimony that

Jury Charge

1058

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2 you believe to be true and you may disregard
3 that portion which you believe to be false.
4 Remember, it's the quality of the testimony
5 that is controlling, not necessarily the
6 number of witnesses that testified for one
7 side or the other, or the quantity of the
8 testimony.

9 As I have said, questions in and of
10 themselves are not evidence. It's the
11 question plus the answer that constitutes
12 evidence. Inferences or suggestions
13 contained in a question do not make that a
14 fact when the answer negates the inference or
15 suggestion contained in the question.

16 Whenever any inconsistencies appear in
17 the testimony of a witness, it is your duty
18 to reconcile them, if you are honestly able
19 to do so. You're not to reject the testimony
20 of any witness arbitrarily. Whenever you
21 find conflicting testimony which you are not
22 able to reconcile, you may disregard that
23 which you deem exaggerated or mistaken or
24 willfully false and accept only that part
25 which you find you to be true.

Jury Charge.

1059

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2 In determining the credibility of any
3 witness, and the weight to be given by you to
4 that testimony, if any, you may consider the
5 interest of the witness in the outcome of the
6 trial. A witness is an considered an
7 interested witness when, by reason of
8 relationship, friendship, antagonism, or
9 prejudice, in favor of or against one party
10 or the other, his or her testimony in your
11 judgment is in fact biased or likely to be
12 biased toward the side or party that he or
13 she favors. If you find that any such
14 witness is an interested witness, you should
15 consider such interest in determining the
16 credibility of that testimony and the weight
17 to be given to it.

18 The defendant testified in this case as
19 a witness in his own behalf. A defendant is
20 of course an interested witness in the
21 outcome of the case. You, as jurors, may
22 wish to keep such interest in mind in
23 determining the credibility and the weight to
24 be given to the defendant's testimony.

25 A disinterested witness, on the other

Jury Charge

1060

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2 hand, is one who has no interest in the
3 outcome of the trial, a factor you may wish
4 to consider in determining the credibility
5 and weight of the testimony of such witness.
6 Further, there is no legal presumption that
7 an interested witness is necessarily lying,
8 nor is there any legal presumption that a
9 disinterested witness is necessarily telling
10 the truth.

11 In summary, you should not necessarily
12 reject the testimony of an interested witness
13 merely because of such interest, nor should
14 you accept the testimony of a disinterested
15 witness, merely because of that disinterest.

16 There has been testimony in this case by
17 certain police officers. You must use the
18 same yardstick in measuring the credibility
19 and value of the testimony given by a police
20 officer that you will use to evaluate the
21 testimony of any other witness. You must not
22 give it any greater, but not any lesser,
23 probative value, nor greater or lesser weight
24 and credence. You will weigh the police
25 officer's testimony and credibility just as

Jury Charge

1061

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2 you weigh the credibility and the testimony
3 of any other witness.

4 Now, you are not only to consider the
5 testimony of the witnesses, but, in addition,
6 you are to consider any exhibits which have
7 been marked in evidence. Some of them you
8 have seen during the course of the trial.

9 And should you wish to see the exhibits
10 during your deliberations, you may apply
11 through the foreperson of the jury for
12 permission to do so. You do that in writing.
13 With respect to those items in evidence, you
14 should consider them and give them the weight
15 and value which you believe they are entitled
16 to in assisting you in determining the facts
17 in this case.

18 Under our system of justice, the
19 defendant in a criminal action is presumed to
20 be innocent until the contrary is proven
21 beyond a reasonable doubt. That presumption
22 of innocence belongs to and remains with the
23 defendant throughout the trial and is his
24 until such time you, the jury, unanimously
25 agree that by reliable and credible evidence

Jury Charge

1062

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2 his guilt has been established to your
3 satisfaction beyond a reasonable doubt. If
4 that times comes, the presumption of
5 innocence ceases and is no longer the
6 defendant's. The burden of proving the
7 defendant's guilt rests at all times upon the
8 prosecution. The defendant is never obliged
9 to prove his innocence.

10 I will now discuss with you the
11 constitutionally mandated standard of proof
12 in all criminal cases, that of proof of guilt
13 beyond a reasonable doubt.

14 The standard of proof required in every
15 criminal case is proof of guilt beyond a
16 reasonable doubt. That standard, however,
17 does not require the People to prove the
18 defendant's guilt beyond all doubt, all
19 possibility of doubt, or beyond a shadow of a
20 doubt. It requires the People prove and
21 establish the defendant's guilt beyond a
22 reasonable doubt.

23 Our law, therefore, requires that before
24 this jury may convict the defendant, each of
25 you must be satisfied that the credible

Jury Charge

1063

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2 evidence is sufficient to convince you beyond
3 a reasonable doubt that the defendant is in
4 fact guilty. The evidence must satisfy you
5 beyond a reasonable doubt that the defendant
6 is in fact the person who committed the crime
7 or crimes with which he is charged. The
8 evidence must also establish beyond a
9 reasonable doubt each and every essential
10 element of the crimes charged, as I shall
11 later define such elements for you.

12 What does the law mean when it says or
13 requires proof of guilt beyond a reasonable
14 doubt? When is a doubt of guilt a reasonable
15 doubt under our law?

16 A doubt of the defendant's guilt, to be
17 a reasonable doubt, must be a doubt for which
18 some reason can be given. The doubt, to be a
19 reasonable doubt, therefore, must arise
20 because of the nature and quality of the
21 evidence in the case, or from the lack or
22 insufficiency of the evidence in the case.
23 The doubt, to be a reasonable doubt, should
24 be one which a reasonable person acting in a
25 matter of this importance would be likely to

Jury Charge

1064

entertain because of the evidence or because of the lack of evidence or insufficiency of the evidence in the case.

A doubt of guilt is not a reasonable doubt if, instead of being based upon the nature and quality of the evidence or insufficiency of the evidence, it is based upon some sort of guess or whim or speculation unrelated to the evidence in the case. Also, a doubt of guilt is not a reasonable doubt if the doubt is based merely upon sympathy for the defendant or from a mere desire by a juror to avoid doing what he or she may feel is a disagreeable duty. I therefore repeat -- a doubt of defendant's guilt to be a reasonable doubt must arise either from the nature and quality of the evidence in the case, or from the lack of or insufficiency of the evidence in the case. Therefore, the first duty of each juror is to consider and weigh all the evidence in the case and decide which you believe is credible and worthy of your consideration.

The next duty of each juror is to

Jury Charge

1065

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2 determine whether the juror has, in fact, a
3 reasonable doubt of the defendant's guilt, as
4 that term is defined in our law. A
5 reasonable doubt, our law says, is an actual
6 doubt, one which you are conscious of having
7 in your mind after having considered all of
8 the evidence in the case. If, after doing
9 so, you then feel uncertain and not fully
10 convinced of the defendant's guilt, and you
11 are also satisfied that in entertaining such
12 a doubt you are acting as a reasonable person
13 should act in a matter of this importance,
14 then that is a reasonable doubt of which the
15 defendant is entitled to the benefit.

16 I repeat, it is the duty of each juror
17 to carefully review, weigh, and consider all
18 of the evidence in the case. If, after doing
19 so, you find the People have not proved the
20 defendant's guilt beyond a reasonable doubt,
21 as I have defined that term for you, then you
22 must find the defendant not guilty. On the
23 other hand, if you are satisfied that the
24 People have proved the defendant's guilt
25 beyond a reasonable doubt, as I have defined

Jury Charge

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2 that term for you, then you may find the
3 defendant guilty.

4 In arriving at your verdict, you are not
5 to consider or speculate concerning matters
6 relating to sentence or punishment. Such
7 matters are solely within the province of the
8 Court, as a matter of law. They are for me
9 to decide and must not be permitted to have
10 any consideration or bearing upon whether the
11 defendant is guilty or not guilty. So in
12 your deliberations if anyone brings up the
13 item of punishment or sentence, you tell them
14 what I just said. You're not even to
15 consider it. Your verdict must be devoid of
16 any sympathy, prejudice, or bias.

17 As you are aware, during this trial a
18 statement allegedly to have been made by the
19 defendant, Hai Guang Zheng, to Detective
20 Keith Ng has been admitted into evidence. I
21 now instruct you that even though the
22 statement has been admitted into evidence,
23 and you may become aware of its contents
24 during your deliberations, you must give no
25 weight whatsoever to the statement in

Jury Charge

1067

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2 arriving at your verdict unless you find, in
3 accordance with my instructions, first, that
4 it was a voluntary statement, and second, it
5 was truthful. Whether a statement is
6 voluntarily made and whether a statement is
7 truthful are both issues of fact for the jury
8 to decide in accordance with the legal
9 definition of those terms. I instruct you
10 that the burden of proof is upon the People
11 to convince you beyond a reasonable doubt
12 that the statement was voluntarily made and
13 also that the statement was truthful.

14 I further instruct you that if the
15 People fail to establish to your satisfaction
16 beyond a reasonable doubt that the statement
17 was voluntarily made, you must, in arriving
18 at your verdict, disregard it and strike it
19 from your you minds as though you'd never
20 heard it. You must disregard it even if you
21 believe the statement was in all respects
22 truthful. Even if the People prove to your
23 satisfaction beyond a reasonable doubt that
24 the statement was voluntarily made, the
25 People must also prove to your satisfaction

Jury Charge

1068

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2 beyond a reasonable doubt that the statement
3 was in whole or in part truthful.

4 Now, I will first define for you the
5 term voluntarily made and after that I will
6 tell you what the term truthful means.

7 Why does our law require that a
8 statement must be voluntarily made before a
9 jury is allowed to consider it in arriving at
10 its verdict? It is because our system of law
11 is an accusatorial system. Under an
12 accusatorial system, the guilt of a defendant
13 must be established by the People by evidence
14 freely and voluntarily secured. In simple
15 terms, that means that the People may not
16 prove a defendant's guilt by a statement out
17 of the defendant's own mouth unless such
18 statement was knowingly, freely, and
19 willingly given by the defendant.

20 Therefore, a statement is voluntarily
21 made by the defendant only if it was in fact
22 knowingly, freely, and willingly given by
23 him. Our law does not specifically define
24 when a statement is voluntarily made.

25 Instead, it defines when a statement is

Jury Charge

1069

1 involuntarily made.

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3 In general, section 60.45 of the
4 criminal procedure law provides that a
5 statement of the defendant is involuntarily
6 made, and therefore may not be considered by
7 the jury, if it is obtained by the police or
8 by a prosecutor (1) by means of the use of
9 force or by threats of the use of force, or
10 (2) by means of deception, trickery, or
11 projects likely to induce an unwilling
12 statement, or (3) in violation of the
13 defendant's rights under the Constitution of
14 the United States or the State of New York.
15 These constitutional rights include the right
16 to remain silent, the right to the advice and
17 assistance of a lawyer before the defendant
18 answers any questions and gives a statement
19 to the police or prosecutor.

20 In this case, the defendant contends
21 that the defendant's statement was
22 involuntarily made because it was obtained in
23 violation of his constitutional rights.
24 Specifically, the defendant contends his
25 statement was involuntarily made since prior

Jury Charge

1070

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2 to making such statement he did not knowingly
3 and intelligently waive his constitutional
4 right to remain silent and his constitutional
5 right to the presence and assistance of
6 counsel before answering any questions. On
7 the other hand, the People contend that the
8 defendant did knowingly and intelligently
9 waive his constitutional rights.

10 As I instructed you, a statement is
11 voluntarily made if it is given knowingly,
12 freely, and willingly. In order to assure
13 the statement is knowingly given, the police
14 or prosecutor before asking any questions
15 must advise the defendant of his
16 constitutional rights in words or in
17 substance as follows: (1) that he has the
18 right to remain silent; (2) anything he says
19 to the police may be used against him in a
20 court of law; (3) he has the right to the
21 presence of and advice of a lawyer before he
22 answers any questions; and (4) if he cannot
23 afford a lawyer, one will be appointed for
24 him prior to any questions, if he so desires.

25 Our law provides that before any person

Jury Charge

1071

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2 can be questioned, he must be warned of his
3 right to remain silent and to have the
4 assistance of counsel in such a manner that
5 he fully understands them. Our law further
6 provides that before a statement is made by a
7 defendant after such warnings are given can
8 be -- let me read that again.

9 Our law further provides that before a
10 statement made by the defendant after such
11 warnings are given can be voluntarily made,
12 it must be established that the defendant
13 knowingly, freely, and intelligently waived
14 his right to remain silent and waived his
15 right to the assistance of counsel.

16 The defense in this case contends that
17 the defendant did not knowingly and
18 intelligently waive his constitutional
19 rights. The People contend that despite his
20 present contention to the contrary, at the
21 time the defendant was advised of his
22 constitutional rights, he did in fact
23 knowingly and intelligently waive his right
24 to remain silent and his right to the
25 assistance of counsel, and that he freely and

Jury Charge

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2 willingly made the statement in evidence.

3 Since these are disputed facts in issue,
4 whether or not the defendant knowingly and
5 intelligently waived his constitutional
6 rights is a question of fact for the jury on
7 the totality of all the circumstances
8 surrounding the giving of the warnings and
9 the making of the statement in evidence by
10 the defendant.

11 Now, the jury may consider the following
12 circumstances as bearing upon the making of a
13 knowing and intelligent waiver. The jury may
14 wish to consider whether the police resorted
15 to the use of force, or made threats of the
16 use of force, or sought to instill fear in
17 the defendant. Proof that the police, in
18 fact, resorted to force or threats of force
19 to instill fear in the defendant is the
20 strongest evidence that the defendant did not
21 make a knowing and intelligent waiver. On the
22 other hand, proof that the police did not use
23 force or threats or force or seek to instill
24 fear, could tend to establish the defendant
25 did make a knowing and intelligent waiver.

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You may wish to consider these circumstances, if the proof established were present, in deciding whether or not the defendant made a knowing and intelligent waiver of his constitutional rights. I instruct you that the defendant has no burden to prove that he did not make a knowing and intelligent waiver. Instead, the burden is on the People to prove to your satisfaction beyond a reasonable doubt that the defendant, in fact, did make a knowing and intelligent waiver. If the People failed to prove to your satisfaction beyond a reasonable doubt

Jury Charge

1074

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2 that the defendant made a knowing and
3 intelligent waiver of his constitutional
4 rights, then you must find that the
5 defendant's statement was involuntarily made.

6 On the other hand, if you find that the
7 People have established to your satisfaction
8 beyond a reasonable doubt that the defendant
9 knowingly, intelligently, and willfully
10 waived his constitutional rights, then you
11 may find that the statement of the defendant
12 was voluntarily made. You will then continue
13 with your deliberations in accordance with my
14 further instructions.

15 I instructed you earlier that in
16 addition to proving that the statement of the
17 defendant was voluntarily made, the People
18 are required to prove to your satisfaction
19 beyond a reasonable doubt that the statement
20 was truthful. If you find that the statement
21 was involuntarily made you must disregard it,
22 whether or not it was truthful in its
23 existence. Only if you are satisfied beyond
24 a reasonable doubt that the statement was
25 voluntarily made must you then turn to the

Jury Charge

1075

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2 consideration of whether it was also
3 truthful. For just as a jury is instructed
4 to disregard any testimony of a witness given
5 during a trial which it finds false, it must
6 also disregard any statement of a defendant
7 which it finds to have been false in whole or
8 in part.

9 In deciding whether the defendant's
10 statement is true or false in whole or in
11 part, you should apply the same test of
12 credibility you apply in determining whether
13 the testimony of a witness is false or true.
14 Are the facts in the statement consistent
15 with or inconsistent with the facts presented
16 by the witnesses? Is the defendant's
17 statement probable or improbable? Does the
18 defendant have any motive or did he lack any
19 motive for giving a false statement? These
20 are some of the tests you should apply.

21 In reaching your verdict, you may wish
22 to give weight and consideration only to that
23 part of the statement you find to be
24 truthful, and disregard any part you find to
25 be false.

Jury Charge

1076

I summarize briefly my instructions.

Before you may give any consideration or any weight to the defendant's statement, the People must satisfy you beyond a reasonable doubt that the statement was voluntarily made, as I defined that term for you.

If the People have failed to establish to your satisfaction beyond a reasonable doubt that the statement was voluntarily made, in arriving at your verdict you must disregard the statement as though it had never been received in evidence and as though you had never heard it. You then must base your verdict solely on the other evidence remaining in the case.

If, on the other hand, the People have satisfied you beyond a reasonable doubt that the defendant's statement was voluntarily made, you must then turn to the consideration as to whether the statement of the defendant was truthful as I have determined that, or defined that term for you. Only if you are satisfied beyond a reasonable doubt that the defendant's statement was both voluntarily

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Jury Charge

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made and truthful may you give consideration and weight to such statement together with all the other evidence in the case in arriving at your verdict.

The District Attorney has conceded that the original handwritten notes of Detective Michael Greene, in which he took statements from two of the complaining witnesses, and page 3 of Detective Greene's three-page typed police report, cannot be found. I instruct you that you may consider that the contents of these missing notes could be unfavorable and inconsistent with or not supportive, or could even contradict his and the complainants' testimony.

We will now come to that part of my charge which I will analyze the indictment and I will instruct you with respect to the material legal principals applicable to the crimes with which the defendant is charged in this case. I will briefly explain the application of the law to the facts on which you will be required to deliberate and render your verdict as to whether the defendant, Hai

Jury Charge

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Guang Zheng, is guilty or not guilty.

Again, an indictment is merely a written accusation by a grand jury charging the defendant with the commission of a crime or crimes. It has no probative value and carries with it no implication of guilt, and is not evidence.

Now, with respect to counts 1 through 6, 9 and 12 of the indictment, it is important for you to know what acting in concert means. I charge you that section 20 of the penal law of our state, states as follows:

When one person engages in conduct which constitutes an offense, another person is criminally liable for such conduct when acting with the mental culpability required for the commission thereof, he solicits, requests, commands, importunes, or intentionally aids such person to engage in such conduct.

Now, it can be readily discerned from this statute that any person who does any of those things intentionally, that is, knowingly solicits, requests, commands,

Jury Charge

1079

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2 importunes, or intentionally aids such person
3 in the commission of a crime, is just as
4 guilty as if he had committed the very crime
5 himself. He is considered primarily liable
6 under the law to the same extent that the
7 other person is whom he is aiding or
8 abetting. And the degree or extent to which
9 a defendant may participate in the commission
10 of a crime is immaterial in fixing his
11 responsibility. It makes no difference what
12 part he played so long as you found he did
13 play a part in the commission of any or all
14 of the crimes charged in the indictment.

15 When two persons act as partners in the
16 commission of a criminal act, the law does
17 not apportion the percentage of guilt which
18 you may attach to either one of them. So
19 that even though one person may have
20 committed or been responsible for the
21 commission of 99 percent of the acts
22 constituting a crime as charged in the
23 indictment, and the other person may have
24 committed but one percent, as long as you
25 find they were aiding one another, acting

Jury Charge

1080

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2 together, acting in concert, in the eyes of
3 the law they are equally guilty with respect
4 to each count in which the defendant is found
5 to be acting in concert.

6 Now, the first count of the indictment
7 reads as follows: The grand jury of the
8 County of Queens, by this indictment, accuse
9 the defendant of the crime of kidnapping in
10 the first degree committed as follows:

11 The defendant, being aided by another,
12 on or about and between March 31, 1995 and
13 April 2, 1995, in the County of Queens,
14 abducted Liu Yan Wu with intent to compel a
15 third person to pay or deliver money or
16 property as ransom.

17 Section 135.25, subdivision 1, of the
18 penal law of our state, insofar as it is
19 applicable to this case, reads as follows:

20 A person is guilty of kidnapping in the
21 first degree when he abducts another person
22 and when his intent is to compel a third
23 person to pay or deliver money as ransom.

24 The crime of kidnapping, among other
25 things, requires proof of abduction.

Jury Charge

1081

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2 Abduction, as defined by our law, consists of
3 a certain kind of restraint plus specified
4 additional factors. Let me explain each of
5 these two terms to you.

6 First, according to the law, a person
7 restrains another person when he (A)
8 intentionally and unlawfully restricts such
9 person's movements in such a manner as to
10 interfere substantially with her liberty, (B)
11 by moving her from one place to another, or
12 by confining her either in the place where
13 the restriction commences or in a place to
14 which she has been moved, (C) without
15 consent, and (D) with knowledge that the
16 restriction is unlawful.

17 Next, according to the law, a person
18 abducts another person when he restrains a
19 person with intent to prevent her liberation
20 by either (A) secreting her or holding her in
21 a place where she is not likely to be found,
22 or (B) using or threatening to use deadly
23 physical force.

24 Once again, as I have instructed you,
25 kidnapping requires proof of abduction, and

Jury Charge

1082

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2 abduction requires proof of restraint plus
3 the additional factors that I have just
4 specified.

5 In order for you to find the defendant
6 guilty of this crime, the People are required
7 to prove, from all of the evidence in the
8 case beyond a reasonable doubt, each of the
9 following 8 elements:

10 (1) That on or about and between March
11 31, 1995 and April 2, 1995, in Queens County,
12 the defendant, acting in concert, committed
13 an act, thus restrained Liu Yan Wu's
14 movements in such a manner as to interfere
15 substantially with her liberty.

16 (2) That the defendant, acting in
17 concert, intentionally so restricted Liu Yan
18 Wu's movements.

19 According to the law, a person
20 intentionally restricts another person's
21 movement when his conscious aim or objective
22 is to restrain that person's movements.

23 (3) That at the time he, acting in
24 concert, so restricted Liu Yan Wu's
25 movements, the defendant did so by moving Liu

Jury Charge

1083

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2 Yan Wu from one place to another, or by
3 confining her either in the place where the
4 restriction began, or in the place to which
5 she had been moved.

6 (4) The defendant, acting in concert, so
7 restricted Liu Yan Wu's movements without the
8 consent of Liu Yan Wu.

9 According to the law, a person's
10 movements are restricted without her consent
11 when such is accomplished by physical force,
12 intimidation or deception.

13 (5) That the defendant, acting in
14 concert, unlawfully so restricted Liu Yan
15 Wu's movements.

16 A person acts unlawfully when his act or
17 actions are not authorized by law.

18 (6) That at the time he, acting in
19 concert, so restricted Liu Yan Wu's
20 movements, the defendant knew that such
21 restriction was unlawful.

22 According to the law, a person knows
23 that his restriction of another person's
24 movement is unlawful when he is aware that
25 such restriction is not authorized by law.

Jury Charge

1084

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2 Therefore, if you find the People have
3 proved to your satisfaction beyond a
4 reasonable doubt each of these 6 elements, as
5 I have just defined them to you, then you
6 must find the defendant -- that the defendant
7 restrained Liu Yan Wu.

8 But I now charge, and I emphasize, that
9 in order for such restraint to constitute the
10 crime of kidnapping in the first degree, you
11 must further find the People have proved to
12 your satisfaction beyond a reasonable doubt
13 the following two additional elements:

14 (7) That the restraint constituted what
15 the law calls abduction; that is, that the
16 defendant, acting in concert, so restrained
17 Liu Yan Wu with intent to prevent her
18 liberation by secreting her or holding her in
19 a place where she was not likely to be found,
20 or by using or threatening to use deadly
21 physical force.

22 According to the law, deadly physical
23 force means physical force which, under the
24 circumstances in which it is used, is readily
25 capable of causing death or serious physical

Jury Charge

1085

injury.

(8) That the defendant, acting in concert, so restrained Liu Yan Wu with intent to compel a third person to pay money as ransom.

Ransom is defined as the money, price, or consideration paid or demanded for redemption of a captive person, that is, a payment to secure the release of such person.

Therefore, with respect to count 1 of the indictment, if you find that the People have proved to your satisfaction beyond a reasonable doubt each of these 8 elements, as I have just explained them, the first 6 elements constituting restraint and the last 2 the additional factors which must be proved in order for you to find the defendant guilty of kidnapping in the first degree:

(1) that on or about between March 31, 1995 and April 2, 1995 in Queens County, the defendant, acting in concert, committed an act, thus restricting Liu Yan Wu's movements in such manner as to interfere substantially with her liberty;

Jury Charge

1086

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2 (2) that the defendant, acting in
3 concert, intentionally so restricted Liu Yan
4 Wu's movements;

5 (3) that at the time he, acting in
6 concert, so restricted Liu Yan Wu's
7 movements, the defendant did so by moving Liu
8 Yan Wu from one place to another, or by
9 confining her either in the place where the
10 restriction began or in a place to which she
11 had been moved;

12 (4) that the defendant, acting in
13 concert, so restricted Liu Yan Wu's movements
14 without the consent of Liu Yan Wu;

15 (5) that the defendant, acting in
16 concert, unlawfully so restricted Liu Yan
17 Wu's movements;

18 (6) that at the time the defendant,
19 acting in concert, so restricted Liu Yan Wu's
20 movements, the defendant knew that such
21 restriction was unlawful;

22 (7) that the restraint constituted what
23 the law calls abduction; that is, the
24 defendant, acting in concert, so restrained
25 Liu Yan Wu with intent to prevent her

Jury Charge

1087

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2 liberation by secreting or holding her in a
3 place she was not likely to be found, or by
4 using or threatening to use deadly physical
5 force; and

6 (8) that the defendant, acting in
7 concert, so restrained Liu Yan Wu with intent
8 to compel a third person to pay or deliver
9 money as ransom, then you must find the
10 defendant guilty of the crime of kidnapping
11 in the first degree under count 1.

12 On the other hand, if you find that the
13 People have failed to prove to your
14 satisfaction beyond a reasonable doubt any
15 one or more of these 8 elements, then you
16 must you find the defendant not guilty of
17 kidnapping in the first degree under count 1.

18 Now, count 2 of the indictment reads as
19 follows:

20 The grand jury of the County of Queens
21 by this indictment accuse the defendant of
22 the crime of kidnapping in the first degree,
23 committed as follows:

24 The defendant, being aided by another,
25 on or about and between March 31, 1995 and

Jury Charge

1088

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2 April 2, 1995, in the County of Queens,
3 abducted Jin Hao Liu with intent to compel a
4 third person to pay or deliver money or
5 property as ransom.

6 The law with respect to count 2 of the
7 indictment is the exact same law I just gave
8 you with respect to count 1, except that
9 wherever the name of Liu Yan Wu was read in
10 count 1, the name Jin Hao Liu should be
11 substituted in its place under count 2.

12 Now, the third count of the indictment
13 reads as follows:

14 The grand jury of the County of Queens
15 by this indictment, accuse the defendant of
16 the crime of kidnapping in the first degree,
17 committed as follows:

18 The defendant, being aided by another,
19 on or about and between March 31, 1995 and
20 April 2, 1995, in the County of Queens,
21 abducted Liu Yan Wu and restrained Liu Yan Wu
22 for a period of more than 12 hours with
23 intent to violate and abuse Liu Yan Wu
24 sexually.

25 Section 135.25, subdivision 2, of the

Jury Charge

1089

penal law of our state, insofar as it is applicable to this count, reads as follows:

A person is guilty of kidnapping in the first degree when he abducts another person and when he restrains the person abducted for a period of more than 12 hours with intent to violate or abuse her sexually.

The crime of kidnapping, among other things, requires proof of abduction.

Abduction, as defined in our law, consists of a certain kind of restraint plus specified additional factors. And let me explain them again for you, these two terms.

First, according to the law, a person restrains another person when he (A) intentionally and unlawfully restricts such person's movements in such manner as to interfere substantially with her liberty, (B) by moving her from one place to another, or by confining her either in the place where the restriction commences or in a place to which she has been moved, (C) without consent, and (D) with knowledge the restriction is unlawful.

Jury Charge

1090

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2 Next, according to the law, a person
3 abducts another person when he restrains a
4 person with intent to prevent her liberation
5 by either (A) secreting her or holding her in
6 a place where she is not likely to be found,
7 or (B) using or threatening to use deadly
8 physical force.

9 Once again, as I have instructed you,
10 kidnapping requires proof of abduction, and
11 abduction requires proof of restraint plus
12 the additional factors I have just specified.

13 In order for you to find the defendant
14 guilty of this crime, the People are required
15 to prove from all of the evidence in the case
16 beyond a reasonable doubt, each of the
17 following 9 elements:

18 (1) That on or about and between March
19 31, 1995 and April 2, 1995 in Queens County,
20 the defendant, acting in concert, committed
21 an act, thus restricted Liu Yan Wu's
22 movements in such a manner as to interfere
23 substantially with her liberty.

24 (2) That the defendant, acting in
25 concert, intentionally so restricted Liu Yan

Jury Charge

1091

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2 Wu's movements.

3 According to the law, a person
4 intentionally restricts another person's
5 movements when his conscious aim or objective
6 is to restrict that person's movements.

7 (3) That at the time he, acting in
8 concert, so restricted Liu Yan Wu's
9 movements, the defendant did so by moving Liu
10 Yan Wu from one place to another, or by
11 confining her in the place where the
12 restriction began or in a place to which she
13 had been moved.

14 (4) That the defendant, acting in
15 concert, so restricted Liu Yan Wu's movements
16 without the consent of Liu Yan Wu.

17 According to the law, a person
18 restricts -- according to the law, a person's
19 movements are restricted without her consent
20 when such is accomplished by physical force,
21 intimidation, or deception.

22 (5) That the defendant, acting in
23 concert, unlawfully restricted Liu Yan Wu's
24 movements.

25 A person acts unlawfully when his act or

Jury Charge

1092

actions are not authorized by law.

(6) That at the time he, acting in concert, so restricted Liu Yan Wu's movements, the defendant knew that such restriction was unlawful.

According to the law, a person knows his restriction of another person's movements is unlawful when he is aware that such restriction is not authorized by law.

Therefore, if you find the People have proved to your satisfaction beyond a reasonable doubt each of these 6 elements, as I have just explained them, then you must find the defendant restrained Liu Yan Wu.

But I now charge you, and again I emphasize, in order for such restraint to constitute the crime of kidnapping in the first degree, you must further find the People have proved to your satisfaction beyond a reasonable doubt the following 3 additional elements:

(7) That the restraint constituted what the law calls abduction; that is, the defendant, acting in concert, so restrained

Jury Charge

1093

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2 Liu Yan Wu with intent to prevent her
3 liberation by secreting her or holding her in
4 a place where she was not likely to be found,
5 or by using or threatening to use deadly
6 physical force.

7 According to the law, deadly physical
8 force means physical force which, under the
9 circumstances in which it is used, is capable
10 of using death or other physical injury.

11 (8) That the defendant, acting in
12 concert, so restrained Liu Yan Wu for a
13 period of more than 12 hours.

14 9) That the defendant, acting in
15 concert, so restrained Liu Yan Wu with the
16 intent to violate or abuse her sexually.

17 Therefore, with respect to count 3 of
18 the indictment, if you find that the People
19 have proved to your satisfaction beyond a
20 reasonable doubt each of these 9 elements as
21 I have just explained them, the first 6
22 elements constituting restraint, and the last
23 3 the additional factors which must be proved
24 in order for you to find the defendant guilty
25 of kidnapping in the first degree:

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Jury Charge

1094

(1) That on or about and between March 31, 1995 and April 2, 1995 in the County of Queens, the defendant, acting in concert, committed an act, thus restricting Liu Yan Wu's movements in such manner as to interfere substantially with her liberty;

(2) that the defendant, acting in concert, intentionally so restricted Liu Yan Wu's movements;

(3) that at the time he, acting in concert, so restricted Liu Yan Wu's movements, the defendant did so by moving Liu Yan Wu from one place to another, or by confining her either in the place where the restriction began or in a place to which she had been removed;

(4) that the defendant, acting in concert, so restricted Liu Yan Wu's movements without the consent of Liu Yan Wu;

(5) that the defendant, acting in concert, unlawfully so restricted Liu Yan Wu's movements;

(6) that at the time he, acting in concert, so restricted Liu Yan Wu's

Jury Charge

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2 movements, the defendant knew that such
3 restriction was unlawful;

4 (7) that the restraint constituted what
5 the law calls abduction, that is, the
6 defendant, acting in concert, so restrained
7 Liu Yan Wu with intent to prevent her
8 liberation by secreting her or holding her in
9 a place where she was not likely to be found,
10 or by using or threatening to use deadly
11 physical force;

12 (8) that the defendant, acting in
13 concert, so restrained Liu Yan Wu for a period
14 of more than 12 hours; and

15 (9) that the defendant, acting in
16 concert, so restrained Liu Yan Wu with the
17 intent to violate or abuse her sexually, then
18 you find the defendant guilty of the crime of
19 kidnapping in the first degree under count 3
20 of the indictment.

21 On the other hand, if you find that the
22 People have failed to prove to your
23 satisfaction beyond a reasonable doubt any
24 one or more of these 9 elements, then you
25 must find the defendant not guilty of

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Jury Charge

1096

kidnapping in the first degree.

Now, the fourth count of the indictment reads as follows:

The grand jury of the County of Queens by this indictment, accuse the defendant of the crime of kidnapping in the first degree committed as follows:

The defendant, being aided by another, on or about and between March 31, 1995 and April 2, 1995 in the County of Queens, abducted Jin Hao Liu, and restrained Jin Hao Liu for a period of more than 12 hours with intent to violate and abuse Jin Hao Liu sexually.

The law with respect to count 4 is exactly the same as the law I just gave you with respect to count 3, except that wherever the name of Liu Yan Wu was read in count 3, the name of Jin Hao Liu should be substituted in its place under count 4.

The fifth count of the indictment reads as follows:

The grand jury of the County of Queens by this indictment, accuse the defendant of

Jury Charge

1097

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2 the crime of kidnapping in the first degree,
3 committed as follows:

4 The defendant, being aided by another,
5 on or about and between March 31, 1995 and
6 April 2, 1995 in the County of Queens,
7 abducted Liu Yan Wu and restrained Liu Yan Wu
8 for a period of more than 12 hours with
9 intent to terrorize Liu Yan Wu.

10 Now, section 135.25, subdivision 2, of
11 the penal law of our state, insofar as it is
12 applicable to this count, reads as follows:

13 A person is guilty of kidnapping in the
14 first degree when he abducts another person
15 and when he restrains that person abducted
16 for a period of more than 12 hours with
17 intent to terrorize her.

18 The crime of kidnapping, among other
19 things, requires proof of abduction, as I
20 told you before. And as I told you before,
21 abduction, as defined by our law, consists of
22 a certain kind of restraint plus specified
23 additional factors. Let me explain these two
24 terms again.

25 First, according to the law, a person

Jury Charge

1098

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2 restrains another person when he (A)
3 intentionally and unlawfully restricts such
4 person's movement in such manner as to
5 interfere substantially with her liberty, (B)
6 by moving her from one place to another, or
7 by confining her either in the place where
8 the restriction commences or in a place to
9 which she has been moved, (C) without
10 consent, and (D) with knowledge the
11 restriction is unlawful.

12 Next, according to the law, again a
13 person abducts another person when he
14 restrains a person with intent to prevent her
15 liberation by either (A) secreting or holding
16 her in a place where she is not likely to be
17 found, or (B) using or threatening to use
18 deadly physical force.

19 Once again, as I have instructed you,
20 kidnapping requires proof of abduction and
21 abduction requires proof of restraint plus
22 the additional factors I have just specified.

23 In order for you to find the defendant
24 guilty of this crime, the People are required
25 to prove from all of the evidence in this

Jury Charge

1099

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2 case beyond a reasonable doubt, each of the
3 following 9 elements:

4 (1) That on or about and between March
5 31, 1995 and April 2, 1995 in Queens County,
6 the defendant, acting in concert, committed
7 an act, thus restraining Liu Yan Wu's
8 movements in such a manner as to interfere
9 substantially with her liberty.

10 (2) That the defendant, acting in
11 concert, intentionally so restricted Liu Yan
12 Wu's movements.

13 According to the law, again, a person
14 intentionally restricts another person's
15 movements when his conscious aim or objective
16 is to restrict that person's movements.

17 (3) That at the time he, acting in
18 concert, so restricted Liu Yan Wu's
19 movements, the defendant did so by moving Liu
20 Yan Wu from one place to another, or by
21 confining her either in the place where the
22 restriction first began, or in the place to
23 which she had been moved.

24 (4) That the defendant, acting in
25 concert, so restricted Liu Yan Wu's movements

Jury Charge

1100

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2 without the consent of Liu Yan Wu.

3 According to the law, a person's
4 movements are restricted without her consent
5 when such is accomplished by physical force,
6 intimidation, and deception.

7 (5) That the defendant, acting in
8 concert, unlawfully so restricted Liu Yan
9 Wu's movements.

10 And a person, again, acts unlawfully
11 when his act or actions are not authorized by
12 law.

13 (6) That at the time he, acting in
14 concert, so restricted Liu Yan Wu's
15 movements, the defendant knew that such
16 restriction was unlawful.

17 Again, according to the law, a person
18 knows that his restriction of another
19 person's movements is unlawful when he is
20 aware that such restriction is not authorized
21 by law.

22 Therefore, if you find the People have
23 proved to your satisfaction beyond a
24 reasonable doubt each of these 6 elements, as
25 I have just explained them, then you must

Jury Charge

1101

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2 find the defendant restrained Liu Yan Wu.

3 But now I charge you again, and I
4 emphasize, that in order for you to find such
5 restraint to constitute the crime of
6 kidnapping in the first degree, you must
7 further find the People have proved to your
8 satisfaction beyond a reasonable doubt the
9 following 3 additional elements:

10 (7) That the restraint constituted what
11 the law calls abduction; that is, that the
12 defendant, acting in concert, so restrained
13 Liu Yan Wu with intent to prevent her
14 liberation by secreting her or holding her in
15 a place where she was not likely to be found,
16 or by using or threatening to use deadly
17 physical force.

18 According to the law, deadly physical
19 force means physical force which, under the
20 circumstances in which it is used, is readily
21 capable of causing death or other physical
22 injury.

23 (8) That the defendant, acting in
24 concert, so restrained Liu Yan Wu for a
25 period of more than 12 hours.

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Jury Charge

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(9) That the defendant, acting in concert, so restrained Liu Yan Wu with intent to terrorize her.

According to Webster's New College Dictionary, terrorize means to fill with terror or anxiety -- to coerce by threat or violence.

Therefore, with respect to count 5 of the indictment, if you find that the People have proved to your satisfaction beyond a reasonable doubt each of these 9 elements as I just explained them, the first 6 elements constituting restraint and the last 3 the additional factors which must be proved in order for you to find the defendant guilty of kidnapping in the first degree:

(1) That on or about and between March 31, 1995 and April 2, 1995 in Queens County, the defendant, acting in concert, committed an act, thus restricting Liu Yan Wu's movements in such manner as to interfere substantially with her liberty;

(2) that the defendant, acting in concert, intentionally so restricted Liu Yan

Jury Charge

1103

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2 Wu's movements;

3 (3) that at the time he, acting in
4 concert, so restricted Liu Yan Wu's
5 movements, the defendant did so by moving Liu
6 Yan Wu from one place to another by confining
7 her either in the place where the restriction
8 began or in a place to which she had been
9 moved;

10 (4) that the defendant, acting in
11 concert, so restricted Liu Yan Wu's movements
12 without the consent of Liu Yan Wu;

13 (5) that the defendant, acting in
14 concert, unlawfully so restricted Liu Yan
15 Wu's movements;

16 (6) that at the time he, acting in
17 concert, so restricted Liu Yan Wu's
18 movements, the defendant knew that such
19 restriction was unlawful;

20 (7) that the restraint constituted what
21 the law calls abduction. Again, that is, the
22 defendant, acting in concert, so restrained
23 Liu Yan Wu with the intent to prevent her
24 liberation by secreting her or holding her in
25 a place she was not likely to be found, or

Jury Charge

1104

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2 using or threatening to use deadly physical
3 force;

4 (8) that the defendant, acting in
5 concert, so restrained Liu Yan Wu for a
6 period of more than 12 hours; and

7 (9) that the defendant, acting in
8 concert, so restrained Liu Yan Wu with intent
9 to terrorize her, then you must find the
10 defendant guilty of the crime of kidnapping
11 in the first degree under count 5.

12 On the other hand, if you find that the
13 People have failed to prove to your
14 satisfaction beyond a reasonable doubt any
15 one or more of these 9 elements, then you
16 must find the defendant not guilty of
17 kidnapping in the first degree under count 5
18 of the indictment.

19 Count 6 of the indictment reads as
20 follows:

21 The grand jury of the County of Queens
22 by this indictment, accuse the defendant of
23 the crime of kidnapping in the first degree,
24 committed as follows:

25 The defendant, being aided by another,

1 Jury Charge 1105

2 on or about and between March 31, 1995 and
3 April 2, 1995, in the County of Queens,
4 abducted Jin Hao Liu and restrained Jin Hao
5 Liu for a period of more than 12 hours with
6 intent to terrorize Jin Hao Liu.

7 The law with respect to count 6 is the
8 exact same as the law I just gave you with
9 respect to count 5, except whenever the name
10 of Liu Yan Wu is read in count 5, the name of
11 Jin Hao Liu should be substituted in its
12 place in count 6.

13 Now, the seventh count of the indictment
14 reads as follows:

15 The grand jury of the County of Queens
16 by this indictment, accuse the defendant of
17 the crime of rape in the first degree,
18 committed as follows:

19 The defendant, on or about and between
20 March 31, 1995 and April 2, 1995 in the
21 County of Queens, being male, engaged in
22 sexual intercourse with Liu Yan Wu, a female,
23 by means of forcible compulsion.

24 Section 130.35 of the penal law of our
25 state, insofar as it is applicable to this

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Jury Charge

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case, reads as follows:

A person is guilty of rape in the first degree when he engages in sexual intercourse with another person by forcible compulsion.

In order for you to find the defendant guilty of this crime, the People are required to prove to your satisfaction, beyond a reasonable doubt from all of the evidence in the case, each of the following 3 elements,

(1) That on or about and between March 31, 1995 and April 2, 1995 in Queens County the defendant engaged in sexual intercourse with Liu Yan Wu.

According to the law, sexual intercourse has its ordinary meaning and occurs upon penetration, however slight. In order to constitute sexual intercourse, penetration need not be deep, nor need there be emission or orgasm. Any penetration of the penis into the vaginal opening, regardless of the distance or amount of penetration, constitutes an act of sexual intercourse.

(2) That the defendant engaged in such sexual intercourse without Liu Yan Wu's

Jury Charge

1107

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2 consent.

3 (3) That the lack of consent of Liu Yan
4 Wu resulted from the use of forcible
5 compulsion by the defendant.

6 According to the law, forcible
7 compulsion means to compel by either use of
8 physical force or a threat, express or
9 implied, which places a person in fear of
10 immediate death or physical injury to
11 herself, or another person, or in fear that
12 she, or another person, will be immediately
13 kidnapped.

14 A person is legally deemed to be
15 forcibly compelled to submit to sexual
16 intercourse when the defendant uses physical
17 force upon them. However, under the statute,
18 even if no physical force was used, but
19 instead the defendant by a threat, express or
20 implied, places her in fear of immediate
21 death or physical injury to herself or
22 another person, or fear she or another
23 personal will immediately be kidnapped, then
24 the law deems sexual intercourse to be
25 forcibly compelled.

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Jury Charge

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Therefore, if you find that the defendant engaged in sexual intercourse with Liu Yan Wu by forcible compulsion, that such sexual intercourse was without Liu Yan Wu's consent.

Therefore, with respect to count 7 of the indictment, if you find the that People have proved to your satisfaction beyond a reasonable doubt these 3 elements, as I was just explained them:

(1) That on or about and between March 31, 1995 and April 2, 1995 in Queens County, the defendant engaged in sexual intercourse with Liu Yan Wu;

(2) that the defendant engaged in such sexual intercourse without Liu Yan Wu's consent; and

(3) that the lack of consent of Liu Yan Wu resulted from the use of forcible compulsion by the defendant, then you must find the defendant guilty of the crime of rape in the first degree under count 7.

On the other hand, if you find the People have failed to prove to your

Jury Charge

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2 satisfaction beyond a reasonable doubt any
3 one or more of these 3 elements, then you
4 must find the defendant not guilty of rape in
5 the first degree under count 7.

6 Count 8 of the indictment reads as
7 follows:

8 The grand jury of the County of Queens
9 by this indictment, accuse the defendant of
10 the crime of rape in the first degree,
11 committed as follows:

12 The defendant, on or about and between
13 March 31, 1995 and April 2, 1995 in the
14 County of Queens, being male, engaged in
15 sexual intercourse with Jin Hao Liu, a
16 female, by means of forcible compulsion.

17 The law with respect to count 8 is
18 exactly the same as I gave you with respect
19 to count 7, except wherever the name of Liu
20 Yan Wu is read in count 7, the name of Jin
21 Hao Liu should be substituted in its place in
22 count 8.

23 The ninth count of the indictment reads
24 as follows:

25 The grand jury of the County of Queens

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Jury Charge

1110

by this indictment, accuse the defendant of the crime of kidnapping in the second degree, committed as follows:

The defendant, being aided by another, on or about and between March 31, 1995 and April 2, 1995 in the County of Queens, abducted Guo Bang Liu.

Section 135.20 of the penal law of our state, insofar as it is applicable in this case, reads as follows:

A person is guilty of kidnapping in the second degree when he abducts another person.

The crime of kidnapping requires proof of abduction. Abduction, as defined by our law, again, consists of a certain kind of restrained plus specified additional factors. Let me again explain these two terms.

First, according to the law, a person restrains another person when he intentionally and unlawfully restricts such person's movements in such a manner as to interfere substantially with his liberty, (B) by moving him from one place to another, or by confining him either to the place where

Jury Charge

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2 the restriction commences or in a place where
3 he has been moved, (C) without consent, and
4 (D) with knowledge the restriction is
5 unlawful.

6 Next, according to the law, a person
7 abducts another person when he restrains a
8 person with intent to prevent his liberation
9 by either (A) secreting or holding him in a
10 place where he is not likely to be found, or
11 (B) using or threatening to use deadly
12 physical force.

13 Once again, as I have instructed you,
14 kidnapping requires proof of abduction, and
15 abduction requires proof of restraint plus
16 additional factors I have just specified.

17 In order for you to find the defendant
18 guilty of this crime, the People are required
19 to prove from all of the evidence in the case
20 beyond a reasonable doubt each of the
21 following 7 elements:

22 (1) That on or about and between March
23 31, 1995 and April 2, 1995 in Queens County,
24 the defendant, acting in concert, committed
25 an act, thus restricting Guo Bang Liu's

Jury Charge

1112

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2 movements in such manner as to interfere
3 substantially with his liberty.

4 (2) That the defendant, acting in
5 concert, intentionally so restricted Guo Bang
6 Liu's movements.

7 According to the law, again, a person
8 intentionally restrains another person's
9 movements when his conscious aim or objective
10 is to restrict that person's movements.

11 (3) That at the time he, acting in
12 concert, restricted Guo Bang Liu's movements,
13 the defendant did so by moving Guo Bang Liu
14 from one place to another, or by confining
15 him either in the place the restraining
16 began, or the place he had been moved.

17 (4) That the defendant, acting in
18 concert, so restricted Guo Bang Liu's
19 movements without the consent of Guo Bang
20 Liu.

21 According to the law, again, the
22 defendant knows the restriction of a person's
23 movements is unlawful when he knows such
24 restriction is not authorized by law.

25 Therefore, if you find that the People

Jury Charge

1113

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2 have proved to your satisfaction beyond a
3 reasonable doubt, each these 6 elements, as I
4 have just explained them, then you must find
5 that the defendant restrained Guo Bang Liu.

6 But I now charge you again, and I
7 emphasize again, in order for you to find
8 such restraint constituted the crime of
9 kidnapping in the second degree, you must
10 further find that the People have proved to
11 your satisfaction beyond a reasonable doubt
12 the following one additional elemental:

13 (7) That the restraint constituted what
14 the law calls abduction; again, that is that
15 the defendant so restrained Guo Bang Liu with
16 intent to prevent his liberation by secreting
17 or holding him in a place he was not likely
18 to be found, or by using or threatening to
19 use deadly physical force.

20 According to the law, deadly physical
21 force means physical force which, under the
22 circumstances in which it is used, is readily
23 capable of causing death or other serious
24 physical injury.

25 Therefore, with respect to count 9 of

Jury Charge

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2 the indictment, if you find that the People
3 have proved to your satisfaction beyond a
4 reasonable doubt each of these 7 elements, as
5 I have just explained them, the first 6
6 elements constituting restraint, and the last
7 one the additional factor which must be
8 proved in order for you to find the defendant
9 guilty of kidnapping in the second degree:

10 (1) That on or about and between March
11 31, 1995 and April 2, 1995 in Queens County,
12 the defendant, acting in concert, committed
13 an act, thus restricting Guo Bang Liu's
14 movements in such manner as to interfere
15 substantially with his liberty;

16 (2) that the defendant, acting in
17 concert, intentionally so restricted Guo Bang
18 Liu's movements;

19 (3) that at the time he, acting in
20 concert, so restricted Guo Bang Liu's
21 movements, the defendant did so by moving Guo
22 Bang Liu from one place to another, or by
23 confining him either in the place the
24 restriction began or in a place which he had
25 been moved;

Jury Charge

1115

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2 (4) that the defendant, acting in
3 concert, so restricted Guo Bang Liu's
4 movements without the consent of Guo Bang
5 Liu;

6 (5) that the defendant, acting in
7 concert, unlawfully so restricted Guo Bang
8 Liu's movements;

9 (6) that at the time he, acting in
10 concert, so restricted Guo Bang Liu's
11 movements, the defendant knew that such
12 restriction was unlawful; and

13 (7) that the restraint constituted what
14 the law calls abduction; again, that is that
15 the defendant, acting in concert, so
16 restrained Guo Bang Liu with intent to
17 prevent his liberation by secreting him or
18 holding him in a place he was not likely to
19 be found, or by using or threatening to use
20 deadly physical force, then you must find the
21 defendant guilty of the crime of kidnapping
22 in the second degree.

23 On the other hand, if you find that the
24 People have failed to prove your satisfaction
25 beyond a reasonable doubt any one or more of

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Jury Charge 1116

these 7 elements, then you must find the defendant not guilty of kidnapping in the second degree.

The tenth count of the indictment reads as follows:

The grand jury of the County of Queens by this indictment, accuse the defendant of the crime of sexual abuse in the first degree, committed as follows:

The defendant, on or about and between March 31, 1995 and April 2, 1995 in the County of Queens, subjected Liu Yan Wu to sexual contact by touching her breast with his hand by means of forcible compulsion.

Section 130.65, subdivision 1, insofar as it is applicable to this case, reads as follows:

A person is guilty of sexual abuse in the first degree when he subjects another person to sexual contact by forcible compulsion.

In order for you to find the defendant guilty of this crime, the People are required to prove from all the evidence in the case

Jury Charge

1117

beyond a reasonable doubt, each of the following 3 elements:

(1) That on or about and between March 31, 1995 and April 2, 1995 in Queens County, the defendant intentionally, and not by accident, subjected Liu Yan Wu to sexual contact in that he touched her breast with his hand.

According to the law, sexual contact means any intentional touching of the sexual or other intimate part of a person not married to the defendant for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing.

According to the law, a person intentionally subjects another person to sexual contact when his conscious aim or objective is to subject that person to such sexual contact.

(2) That the defendant subjected Liu Yan Wu to sexual contact without the consent or

Jury Charge

1118

acquiescence of Liu Yan Wu.

(3) That the lack of consent of Liu Yan Wu resulted from the use of forcible compulsion by the defendant.

According to the law, forcible compulsion means to compel by either the use of physical force or a threat, express or implied, which places the person in fear of immediate death or physical injury to herself, or another person, or in fear that she or another person will be immediately kidnapped.

A person is legally deemed to have been forcibly compelled to submit to sexual contact when the defendant uses physical force upon her. However, under the statute, even if no physical force is used, but instead the defendant, by a threat, express or implied, places her in fear of immediate death or physical injury to herself or another person, or fear she or another person will immediately be kidnapped, then the law deems sexual contact to have been forcibly compelled.

Jury Charge

1119

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2 Therefore, if you find the defendant
3 subjected Liu Yan Wu to sexual contact by
4 forcible compulsion, then such sexual contact
5 was without Liu Yan Wu's consent.

6 Therefore, with respect to count 10 of
7 the indictment, if you find that the People
8 have proved to your satisfaction beyond a
9 reasonable doubt each of these 3 elements, as
10 I have just explained them:

11 (1) That on or about and between March
12 31, 1995 and April 2, 1995 in Queens County,
13 the defendant intentionally, and not by
14 accident, subjected Liu Yan Wu to sexual
15 contact, in that he touched her breast with
16 his hand;

17 (2) that the defendant subjected Liu Yan
18 Wu to such sexual contact without the consent
19 or acquiescence of Liu Yan Wu; and

20 (3) that the lack of consent of Liu Yan
21 Wu resulted from the use of forcible
22 compulsion by the defendant, then you must
23 find the defendant guilty of the crime of
24 sexual abuse in the first degree under count
25 10.

Jury Charge

1120

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2 On the other hand, if you find that the
3 People have failed to prove to your
4 satisfaction beyond a reasonable doubt, any
5 one or more of these 3 elements, then you
6 must find the defendant not guilty of sexual
7 abuse in the first degree.

8 The eleventh count of the indictment
9 reads as follows:

10 The grand jury of the County of Queens
11 accuse the defendant of the crime of sexual
12 abuse in the first degree, committed as
13 follows:

14 The defendant, on or about and between
15 March 31, 1995 and April 2, 1995 in the
16 County of Queens, subjected Jin Hao Liu to
17 sexual contact by touching her breast with
18 his hand by means of forcible compulsion.

19 The law with respect to count 11 is the
20 same exact law as I just gave you with
21 respect to count 10, except whenever the name
22 of Liu Yan Wu was read in count 10, the name
23 of Jin Hao Liu should be substituted in its
24 place in count 11.

25 The twelfth count of the indictment

Jury Charge

1121

reads as follows:

The grand jury of the County of Queens by this indictment, accuse the defendant of the crime of criminal possession of a weapon in the second degree, committed as follows:

The defendant, being aided by another, on or about and between March 31, 1995 and April 2, 1995 in the County of Queens, knowingly and unlawfully possessed a loaded firearm, to wit, a firearm, with intent to use same unlawfully against another.

The subject matter of this being an armed felony as that term is defined in section 1.20 of the criminal procedure law.

Section 265.03 of the penal law of our state, insofar as is applicable to this case, reads as follows:

A person is guilty of criminal possession of a weapon in the second degree when he possesses a machine gun or loaded firearm with intent to use the same unlawfully against another.

In order for you to find the defendant guilty of this crime, the People are required

Jury Charge

1122

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2 to prove to your satisfaction, beyond a
3 reasonable doubt, from all of the evidence in
4 the case beyond a reasonable doubt, each of
5 the following 4 elements:

6 (1) That on or about and between March
7 31, 1995 and April 2, 1995 in Queens County,
8 the defendant, acting in concert, possessed a
9 loaded pistol.

10 According to the law, to possess means
11 to have physical possession or otherwise to
12 exercise dominion or control over tangible
13 property. Possession of property must be
14 knowing possession; that is the alleged
15 possessor must be aware of his possession of
16 the property.

17 According to the law, a loaded pistol is
18 any pistol loaded with ammunition or any
19 pistol possessed by one who at the same time
20 possesses ammunition which might be used to
21 discharge such pistol.

22 (2) That at the time the defendant,
23 acting in concert, possessed the same
24 knowingly.

25 According to the law, a person possesses

Jury Charge

1123

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2 a weapon knowingly when he is consciously
3 aware he possess such weapon.

4 (3) That at the time the defendant,
5 acting in concert, possessed such loaded
6 pistol, such loaded pistol was operable.

7 I instruct you a weapon is operable if
8 by exerting pressure on a trigger, the weapon
9 is capable of expelling a bullet or other
10 missile. A loaded weapon is operable when
11 the ammunition in the weapon, or separately
12 possessed, is capable of being fired from the
13 weapon.

14 (4) That at the time the defendant,
15 acting in concert, possessed such loaded
16 pistol, he possessed the same with intent to
17 use it unlawfully against another.

18 According to the law, a person possesses
19 a weapon with intent to use the same
20 unlawfully against another person, when his
21 conscious aim or objective is to use such
22 weapon to engage in conduct which is
23 forbidden by law.

24 Therefore, with respect to count 12 of
25 the indictment, if you find the People have

Jury Charge

1124

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2 proved to your satisfaction beyond a
3 reasonable doubt each of these 4 elements as
4 I have just explained them:

5 (1) That on or about and between March
6 31, 1995 and April 2, 1995 in Queens County,
7 the defendant, acting in concert, possessed a
8 load pistol;

9 (2) that at the time the defendant,
10 acting in concert, possessed such loaded
11 pistol, he possessed the same knowingly;

12 (3) that at the time the defendant,
13 acting in concert, possessed such loaded
14 pistol, such loaded pistol was operable;

15 (4) that at the time the defendant,
16 acting in concert, possessed such loaded
17 pistol, he possessed the same with intent to
18 use it unlawfully against another, then you
19 must find the defendant guilty of the crime
20 of criminal possession of a weapon in the
21 second degree under count 12.

22 On the other hand, if you find that the
23 People have failed to prove to your
24 satisfaction beyond a reasonable doubt any
25 one or more of these 4 elements, then you

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Jury Charge

1125

must find the defendant not guilty of criminal possession of a weapon in the second degree under count 12.

To conduct your deliberations in an orderly fashion, you must have a foreperson. Of course, his or her vote is entitled to no greater weight than that of any other juror.

Under our law the juror whose name was first drawn and called must be designated as the foreperson, so that Jose Camacho will act as the foreperson of the jury and will report your verdict to the Court and any other request you have in writing.

Your verdict in this case must be unanimous. That is, all 12 of you must agree, and the verdict will be announced through the foreperson of the jury in writing.

Now, to assist you in recording your verdict, we shall furnish you with a verdict sheet, and I'll read that verdict sheet to you now. The verdict sheet reads as follows:

The People -v- Hai Guang Zheng.

1. How do you find the defendant with

Jury Charge

1126

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2 respect to the charge of kidnapping in the
3 first degree under count 1? There is a place
4 for you to indicate guilty or not guilty.

5 2. How do you find the defendant with
6 respect to the charge of kidnapping in the
7 first degree under count 2? There is a place
8 for you to indicate guilty or not guilty.

9 3. How do you find the defendant with
10 respect to the charge of kidnapping in the
11 first degree under count 3? There is a place
12 for you to indicate not guilty or guilty.

13 4. How do you find the defendant with
14 respect to the charge of kidnapping in the
15 first degree under count 4? There is a place
16 for you to indicate guilty or not guilty.

17 5. How do you find the defendant with
18 respect to the charge of kidnapping in the
19 first degree under count 5? There is a place
20 for you to indicate guilty or not guilty.

21 6. How do you find the defendant with
22 respect to the charge of kidnapping in the
23 first degree under count 6? There is a place
24 for you to indicate guilty or not guilty.

25 7. How do you find the defendant with

Jury Charge

1127

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2 respect to the charge of rape in the first
3 degree under count 7? There is a place for
4 you to indicate guilty or not guilty.

5 8. How do you find the defendant with
6 respect to the charge of rape in the first
7 degree under count 8? There is a place to
8 indicate guilty or not guilty.

9 9. How do you find the defendant with
10 respect to the charge of kidnapping in the
11 second degree under count 9. There is a
12 place to indicate guilty or not guilty.

13 10. How do you find the defendant with
14 respect to the charge of sexual abuse in the
15 first degree under count 10? There is a
16 place to indicate guilty or not guilty.

17 11. How do you find the defendant with
18 respect to the charge of sexual abuse in the
19 first degree under count 11? There is a
20 place to indicate guilty or not guilty.

21 12. How do you find the defendant with
22 respect to the charge of criminal possession
23 of a weapon in the second degree under count
24 12? There is a place for you to indicate
25 guilty or not guilty.

Jury Charge

1128

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2 After you have arrived at a verdict and
3 you have completed the verdict sheet, without
4 revealing the nature of the verdict please
5 just advise the Court first that you have
6 reached a verdict. Again that must be done
7 through the foreperson of the jury.

8 If during the course of your
9 deliberations you wish to have any part of
10 the testimony read back, or if you want any
11 exhibit, or if you have any questions
12 concerning my charge to you or any other
13 question, you must communicate that to me in
14 writing through the foreperson of the jury.
15 If there are any portions of the testimony
16 you want read back to you, please be as
17 specific as possible as to that portion which
18 you want to have read back to you, if any.

19 Now, when you enter the jury room to
20 deliberate, you may find various opinions or
21 conclusions among you. You should make every
22 effort to harmonize the various views
23 expressed, and make every effort to come to
24 an agreement which would speak the truth as
25 far as the facts of the case are concerned.

Jury Charge

1129

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2 You must not go into the jury room with a
3 closed mind and decline to discuss the
4 evidence with them. It's important for each
5 of you to keep an open mind to the arguments
6 advanced by the others. The verdict must be
7 the verdict of each juror and not a mere
8 acquiescence in the conclusion of the others.
9 However, you do not have to surrender your
10 conscientiously held beliefs in order to
11 justify your conclusion by reason.

12 All I'm saying is that you should not
13 close your minds so as to prejudice the
14 conclusions to be arrived at without
15 listening to the arguments of your fellow
16 jurors. I am certain each of you is
17 interested in coming to a fair, just, and
18 honest decision.

19 I ask you, to the best of your ability,
20 to apply common sense and good judgment and
21 to be impartial and fair in your judgment.
22 And don't let any sympathy or prejudice sway
23 your minds in any way in analyzing the
24 testimony. Decide this case on the evidence
25 under the law as I give it to you.

1 Jury Charge 1130

2 Just stay there for one moment.

3 Counsel, step up.

4 (The following took place at sidebar.)

5 THE COURT: Are there any exceptions to
6 the charge?

7 MR. KESSLER: No.

8 MR. SCHECTER: Your Honor, my only
9 exception is when you were dealing with the
10 lost or missing police report, the only
11 thing -- you gave them what would be commonly
12 referred to as a negative inference charge.
13 I'm requesting, because these were notes
14 taken of the complaining witnesses, that
15 their testimony be excluded and the testimony
16 of the Police Officer Greene, Detective
17 Greene, your Honor, or dismiss the
18 indictments.

19 THE COURT: I already denied that
20 application.

21 MR. SCHECTER: I'm excepting to that
22 part of the charge.

23 THE COURT: Any additional requests to
24 charge other than those already made?

25 MR. SCHECTER: Your Honor, when you were

Jury Charge

1131

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2 dealing with the question of my client's
3 statement, one of the statements he also
4 stated was he never made the statement. And
5 as such, whether -- dealing as to the
6 truthfulness of the statement -- I would ask
7 the language you used in the pattern jury
8 charges as to whether defendant claimed he
9 never made a statement be included in the
10 terms that was included in there.

11 THE COURT: Your request to Mr. Tivin
12 was limited --

13 MR. SCHECTER: I also at the end told
14 him I wanted that in there.

15 MR. TIVIN: No, you didn't.

16 MR. SCHECTER: Whether I told him, I'm
17 requesting it.

18 THE COURT: What do you want me to tell
19 them? If they believe he never made the
20 statement, to totally disregard --

21 MR. SCHECTER: I'm asking you to charge
22 it.

23 THE COURT: Is that what you want me to
24 tell them?

25 MR. SCHECTER: I'm asking you read that.

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Jury Charge

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THE COURT: Get me the charge.

MR. SCHECTER: Your Honor, I was under the impression I did --

THE COURT: I specifically asked him. You didn't. If you want it, I will read it. I appreciate it in the future. What do you want to do with the alternate jurors?

MR. SCHECTER: If they want to stay for lunch, whatever, but once the jury starts deliberating, I will not put them in. So has lunch been ordered for them?

THE COURT: No. They have a long day ahead of them. It's not even 12:15. When I let them go, I will order lunch.

(The following took place in open court.)

THE COURT: Ladies and gentlemen, I have been requested to read another portion of the law to you. We are getting it. I will read it. Then we'll continue. Be patient a few minutes.

(Pause in the proceeding.)

Ladies and gentlemen, with respect to the statement made by -- alleged to have been

Jury Charge

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2 made by the defendant to Detective Ng, the
3 defendant contends that he never made the
4 statement attributed to him by Detective Ng.
5 The People contend the defendant did in fact
6 make the statement attributed to him by
7 Detective Ng.

8 Whether or not the defendant, in fact,
9 made the statement attributed to him, is a
10 question of fact for the jury to decide, to
11 be decided by you on the basis of all of the
12 evidence in the case. I instruct you the
13 defendant has no burden to prove he didn't
14 make the statement. The burden of proof to
15 establish the defendant did make the
16 statement is on the People.

17 The People must prove this fact to your
18 satisfaction beyond a reasonable doubt. If
19 the People fail to prove to your satisfaction
20 beyond a reasonable doubt that the defendant
21 did in fact make the statement, you must then
22 in arriving at a verdict disregard the
23 statement as though it was never made and
24 admitted in evidence, as though you'd never
25 heard it. You must then arrive at your

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Proceedings

1134

verdict solely on the basis of all of the evidence, the other evidence admitted in the case.

Are there any other requests or exceptions?

MR. SCHECTER: No.

THE COURT: Keep the alternate jurors separate from the regular jurors.

As soon as the regular jurors commence their deliberations, advise me, please.

(The sworn jury left the courtroom.)

(The alternate jurors remained in the courtroom.)

THE COURT: Jury deliberating?

COURT OFFICER: Yes.

THE COURT: Counsel, you want to step up.

(The following took place at sidebar.)

THE COURT: I'm going to discharge the alternates.

MR. SCHECTER: Yes.

(The following took place in open court.)

THE COURT: Ladies and gentlemen,

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Proceedings

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alternate jurors, the 12 regular jurors have started their deliberations, and counsel have stipulated you can be discharged. I want to thank you. It's because we have alternate jurors like you who are willing to serve -- it's hard being an alternate juror, feeling you might not deliberate in the case. If any of the regular jurors had become ill or incapacitated during the course of the trial, you would have had to step in during the course of the trial. You have contributed substantially to the orderly procedure of the trial. I'm going to discharge you now from your service. I want to thank you for your service on behalf of the State of New York and County of Queens, and you're free to go about your business.

(The alternates jurors left the courtroom.)

THE COURT: Counsel, will you stipulate concerning the evidence?

MR. SCHECTER: Your Honor, everything except -- or the medical record.

MR. KESSLER: Yes.

Proceedings

1136

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2 THE COURT: Go through there. See what
3 should be excised. I don't want any delays
4 if the jury asks for the evidence.

5 MR. SCHECTER: I would just like to
6 speak to him for a few moments.

7 THE COURT: You can take the defendant.
8 Keep him up here.

9 (Pause in the proceeding.)

10 (All parties are present.)

11 THE COURT: Have you agreed on the
12 evidence?

13 MR. KESSLER: No. It looks like your
14 Honor is going to have to make a decision.

15 THE COURT: Both of you stay around the
16 courtroom. Don't leave the area of the
17 courtroom. So if they ask for evidence, you
18 will both be here and I'll be able to rule.

19 MR. SCHECTER: All right.

20 (A recess was taken.)

21 THE CLERK: Case on trial. Let the
22 record reflect the defendant, official
23 Mandarin interpreter, and A.D.A. Kessler is
24 present. The jury is deliberating at this
25 moment.

Proceedings

1137

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2 THE COURT: I have asked the counselors
3 to agree on a stipulation as to the evidence
4 in the case. There are two hospital records
5 in evidence. The People, I believe, urge
6 that the history in the hospital record
7 should be admitted into evidence.
8 Defendant's counsel says that it's hearsay.

9 MR. SCHECTER: Yes.

10 THE COURT: Do you want to make a
11 statement?

12 MR. KESSLER: What I'm saying with
13 regard to the history, well, it's under the
14 history section. I think everyone is in
15 agreement any statement in the hospital
16 record that is for the purposes of diagnosis
17 and treatment is admissible in the hospital
18 record. While I agree the portions about
19 their statements regarding the history of
20 them being abducted at JFK with two men is
21 not relevant for the purposes of diagnosis
22 and treatment, because the doctor really
23 doesn't have to treat the patient based on
24 the abduction, or how many men or where they
25 were, he does have to treat the women based

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Proceedings

1138

on where she was penetrated; vaginally, orally, or rectally. So I would ask the section regarding the fact that she -- in the hospital record where it says, no oral or vaginal penetration, that particular portion be allowed in.

The other thing, the only other note regarding that one page is primary diagnosis or description, alleged sexual assault. That's just the doctor's diagnosis based upon the statements from the patient. The other thing I'm asking to be deleted regarding it was the fact one of the women was pregnant at the time of the rape. And I ask that be deleted from the record. That's because that's in is not, obviously not for any purpose of diagnosis and treatment.

MR. SCHECTER: Your Honor, the doctor was here. He did not testify as to what he made his diagnosis based upon. May have been that. May have been based on the physical examination he gave to the females. We don't know what he is -- or we are speculating, or Mr. Kessler is speculating those are the

Proceedings

1139

1
2 statements. He is paid to make his
3 diagnosis. There is no testimony to that.
4 As such, we cannot say what it was. I'm
5 objecting to that part coming in.

6 THE COURT: I'm going to rule the
7 history is inadmissible as hearsay. There's
8 been no testimony by the doctor, who was on
9 the stand, as to what portion, if any, was
10 necessary for treatment and diagnosis, but
11 his primary diagnosis, description, is
12 admissible.

13 So we will excise the histories in both
14 those records.

15 MR. KESSLER: We will excise the
16 secondary diagnosis as the woman being
17 pregnant.

18 MR. SCHECTER: No objection.

19 THE COURT: There being no objection,
20 that may be excised. Is there anything else
21 in there?

22 MR. KESSLER: No.

23 MR. SCHECTER: No.

24 THE COURT: Okay. Everything is in
25 evidence except for Defendant's A and B, and

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Proceedings

1140

2

3 and 4, the rape kits. So you agree

3

everything else can be brought to the jury,

4

if they request it.

5

MR. SCHECTER: Yes.

6

MR. KESSLER: Yes.

7

THE COURT: Both of you agree to that.

8

If the jury wants any evidence, please

9

notify me. I will give them the evidence

10

based upon the stipulation of counsel.

11

MR. SCHECTER: Your Honor, I told

12

Mr. Chin where I will be. I gave him my

13

beeper number plus the different Parts.

14

THE COURT: Where do you intend to be?

15

MR. SCHECTER: I have a matter in

16

K-14 --

17

THE COURT: I want you here within five

18

minutes.

19

(A recess was taken.)

20

(Court Exhibits 1 and 2 marked.)

21

THE CLERK: Case on trial, 3282 of '95,

22

People -v- Hai Guang Zheng. Defendant is

23

present along with the official Mandarin

24

interpreter, Yi Wan. Defense counsel and

25

Assistant District Attorney are present. The

Proceedings

1141

sworn jurors are in the jury room.

THE COURT: All right. We received two notes from the jury. The first one, which I have marked Court Exhibit 1, reads as follows: We'd like to see the following evidence: 1. Defendant's statement. 2. Four pictures. 3. Officer Greene's report, DD5.

Pursuant to the agreement between counsel, I sent them in the defendant's statement without the Miranda part, just the statement, and the four pictures. I don't believe there was a DD5 in evidence. So that I didn't send them.

The next one is Court Exhibit 2: 1. The testimony of the two female victims, the part dealing with the rape charges. 2. The results of the medical test serology rape victim results.

The court reporter indicates she has that testimony. Are you ready for the readback?

MR. SCHECTER: Your Honor, as to the first part, there will be direct and cross

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Proceedings

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examination.

MR. KESSLER: Judge, the only thing I would say, I don't understand how the Court gave the jury three parts and not the fourth part of the defendant's --

THE COURT: Because they specifically asked for the defendant's statement.

MR. KESSLER: I understand. Part of that statement, your Honor, is his signature is on the first page.

THE COURT: They didn't ask for the Miranda warnings. That's what I gave them. That's what I'm ruling they asked for. They want anything else, they will ask for it.

Would you bring the jurors in, please.

Just because you introduce it as a four-page exhibit, doesn't make it part of the statement.

(The jury entered the courtroom.)

THE CLERK: Counsel, do you waive the formal reading of the roll?

MR. KESSLER: So waived.

MR. SCHECTER: So waived.

THE CLERK: The record will reflect the

Proceedings

1143

12 sworn jurors in the jury box.

THE COURT: All right, ladies and gentlemen, we have your two notes. The first note stated you would like to see the following evidence: defendant's statement and four pictures and Officer Greene's report DD5. I provided you with defendant's statement and the four pictures. There is no DD5 in evidence.

Okay, and then you asked for the testimony which I have marked as Court Exhibit 2, the testimony of the two female victims, the part dealing with the rape charges, and the result of the medical test serology rape kit.

The court reporter will read that back to you.

(The court reporter read back the requested testimony.)

THE COURT: Was the readback sufficient for your deliberation at this point? If not, you can ask for further readbacks.

(The jury left the courtroom.)

(A recess was taken.)

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Proceedings

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(Court Exhibit 3 marked.)

THE CLERK: Case on trial, 3283 of '95.
People -v- Hai Guang Zheng. Defendant is
present along with the official Mandarin
interpreter Yi Wan. Attorney Schecter,
A.D.A. Kessler are present. The sworn jurors
are in the deliberating room.

THE COURT: We have a third note from
the jury, which I have marked Court Exhibit
3. It states: We would like to hear the
testimony of the second female victim leading
to the point where could not identify the
defendant. Please speak slow.

Do you have that portion of the
testimony?

MR. KESSLER: Judge, for the record, are
we beginning with direct testimony and ending
with the portion --

THE COURT: They want the testimony of
the second female victim leading to the point
where she cannot identify the defendant.

MR. KESSLER: So my question is are we
beginning the direct and leading to -- I
don't know what they mean by leading to.

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Proceedings

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THE COURT: What I'm going to have her read -- when you said to the witness, look in the front of the courtroom. Look at the front, the question. And then you can go on. She says, he is not here, or something like that. That's what is leading up to that testimony. And I'll tell the jury if they want any further testimony, they're free to ask for it.

MR. KESSLER: Just to --

THE COURT: You will be able to -- you want me to start with the beginning of the testimony?

MR. KESSLER: I think leading up to that point.

THE COURT: That's what I interpret.

MR. KESSLER: With regard to the second note, I would like to put on the record where the jury indicated about the fact they want to hear testimony involving the rape, it appears the court reporter only read those portions that involved the defendant's penis entering the vagina of the complaining witness. That's not rape. The rape

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Proceedings

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occurred --

THE COURT: If that's not rape, what is rape?

MR. KESSLER: Rape is force. Rape is forcibly putting the penis into the vagina. When you say that's not rape, that's what you just read to the jury, the rape involving force. So there is testimony in the record about how a defendant put a gun to one of their heads. That's rape. That's force. That should be read to the jury.

THE COURT: I told the jury if they needed any other testimony read to them, they can ask for it.

Bring the jurors out, please.

(The jury entered the courtroom.)

THE CLERK: Counsels, you waive the formal reading of the roll of the jurors?

MR. KESSLER: So waived.

MR. SCHECTER: So waived.

THE CLERK: The record reflect 12 sworn jurors now in the jury box.

THE COURT: The presence of all the parties.

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Proceedings

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Ladies and gentlemen, we have your third note, which I have marked Court Exhibit 3. And it reads: We would like to hear the testimony of the second female victim leading to the point where could not identify the defendant. Please speak slow.

The court reporter will read it to you slowly.

(The court reporter read back the requested testimony.)

THE COURT: Is that sufficient? Is there other testimony you want to hear? If there is other testimony you want to hear, please step outside and a note what you want to hear.

(The jury left the courtroom.)

(A recess was taken.)

THE CLERK: Case on trial, 3282 of '95, People -v- Hai Guang Zheng. Defendant is present along with official Mandarin interpreter Yi Wan, counsel Schecter, A.D.A. Kessler. The sworn jurors are in the jury room.

THE COURT: We have Court Exhibit number

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Proceedings

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4, which states: We would like to hear the entire testimony of the second female victim, up to and including the part dealing with the identification of the defendant.

Bring in the jury. Make that a court exhibit.

It doesn't say you have to speak slowly.

(Court Exhibit 4 marked.)

(The jury entered the courtroom.)

THE CLERK: All parties present.

Counselors, you waive the formal reading of the roll of the jurors?

MR. KESSLER: So waived.

MR. SCHECTER: So waived.

THE CLERK: Let the record reflect 12 sworn jurors in the jury box.

THE COURT: Ladies and gentlemen, your last note has been marked Court Exhibit 4. It reads: We would like to hear the entire testimony of the second female victim, up to and including dealing with the identification of the defendant.

(The court reporter read back the requested testimony.)

Proceedings

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2 THE COURT: Is that the testimony you
3 were looking for? Yes. If you need any
4 other, you may ask for it.

5 (The jury left the courtroom.)

6 (A recess was taken.)

7 (Court Exhibit 5 marked.)

8 THE CLERK: Case on trial, 3282 of '95,
9 People -v- Hai Guang Zheng. Defendant is
10 present with Mandarin interpreter Yi Wan,
11 counsel Schecter, and A.D.A. Kessler. The
12 sworn jurors are in the jury room.

13 THE COURT: We have a Court Exhibit 5
14 from the jury: We have reached a verdict on
15 all counts.

16 Bring the jury in, please.

17 (The jury entered the courtroom.)

18 THE CLERK: All parties are present.

19 Counsel, you waive the formal reading of
20 the roll of the jurors?

21 MR. KESSLER: So waived.

22 MR. SCHECTER: So waived.

23 THE CLERK: Mr. Foreman, sir, has the
24 jury reached a verdict?

25 JURY FOREPERSON: Yes, we have.

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Proceedings

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THE CLERK: Show that to the Judge.

Okay. Will the jury please rise.

Defendant, defense counsel, please rise.

Under indictment 3282 of '95, the People of the State of New York against Hai Guang Zheng. Mr. Foreman, we will go one at a time. Under count number 1, how do you find the defendant with respect to the charge of kidnapping in the first degree?

JURY FOREPERSON: Guilty.

THE CLERK: Count 2. How do you find the defendant with respect to the charge of kidnapping in the first degree?

JURY FOREPERSON: Guilty.

THE CLERK: Count number 3. How do you find the defendant with respect to the charge of kidnapping in the first degree?

JURY FOREPERSON: Not guilty.

THE CLERK: Count number 4. How do you find the defendant with respect to the charge of kidnapping in the first degree?

JURY FOREPERSON: Not guilty.

THE CLERK: Count number 5. How do you find the defendant with respect to the charge

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Proceedings

1151

of kidnapping in the first degree?

JURY FOREPERSON: Guilty.

THE CLERK: Count number 6. How do you find the defendant with respect to the charge of kidnapping in the first degree?

JURY FOREPERSON: Guilty.

THE CLERK: Count number 7. How do you find the defendant with respect to the charge of rape in the first degree?

JURY FOREPERSON: Guilty.

THE CLERK: Count number 8. How do you find the defendant with respect to the charge of rape in the first degree?

JURY FOREPERSON: Guilty.

THE CLERK: Count number 9. How do you find the defendant with respect to the charge of kidnapping in the second degree?

JURY FOREPERSON: Guilty.

THE CLERK: Count number 10. How do you find the defendant with respect to the charge of sexual abuse in the first degree?

JURY FOREPERSON: Guilty.

THE CLERK: Count number 11. How do you find the defendant with respect to the charge

Proceedings

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of sexual abuse in the first degree?

JURY FOREPERSON: Guilty.

THE CLERK: Count number 12. How do you find the defendant with respect to the charge of criminal possession of a weapon in the second degree?

JURY FOREPERSON: Guilty.

THE CLERK: Please be seated. Thank you.

Harken to your verdict as it now stands recorded. Under indictment number 3282 of '95, the People of the State of New York against Hai Guang Zheng, under count number 1, kidnapping in the first degree, you say you find the defendant guilty. Count number 2, kidnapping in the first degree, you say you find the defendant guilty. Count number 3, kidnapping in the first degree, you say you find the defendant not guilty. Count number 4, you say you find the defendant -- kidnapping in the first degree, you find the defendant not guilty. Count number 5, kidnapping in the first degree, you say you find the defendant guilty. Count number 6,

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Proceedings

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kidnapping in the first degree, you say you

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find the defendant guilty. Count number 7,

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rape in the first degree, you say you find

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the defendant guilty. Count number 8, rape

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in the first degree, you say you find the

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defendant guilty. Count number 9, kidnapping

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in the second degree, you say you find the

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defendant guilty. Count number 10, sexual

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abuse in the first degree, you say you find

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the defendant guilty. Count number 11,

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sexual abuse in the first degree, you say you

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find the defendant guilty. And count number

14

12, criminal possession of a weapon in the

15

second degree, you say you find the defendant

16

guilty.

17

So say you all?

18

THE JURY: Yes.

19

MR. SCHECTER: Your Honor, could we

20

approach for one moment?

21

THE COURT: Yes.

22

(The following took place at sidebar.)

23

MR. SCHECTER: Your Honor, I would ask,

24

your Honor, to have them go back to

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deliberate. I believe the verdict as for the

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Proceedings

1154

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3rd and 4th count of not guilty, those being

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I believe with intent to violate and abuse

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the two females sexually, to be completely

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inconsistent and repugnant with the verdict

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of rape in the first degree, where they have

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found them guilty of raping the two females.

8

THE COURT: The question is when they

9

kidnapped them did they intend to sexually

10

abuse them. They found they didn't do it

11

when they kidnapped them before, but after

12

they kidnapped them and had them, they raped

13

them, so.

14

MR. SCHECTER: Respectfully except.

15

THE COURT: I so decline.

16

(The following took place in open

17

court.)

18

THE CLERK: Mr. Schecter, would you like

19

the jury polled?

20

MR. SCHECTER: Please.

21

THE CLERK: Okay, jurors. Under

22

indictment 3282 of '95, the People of the

23

State of New York -v- Hai Guang Zheng. Under

24

count number 1 you say you find the --

25

kidnapping in the first degree, you say you

1 Proceedings 1155
2 find the defendant guilty. Count number 2,
3 kidnapping in the first degree, you say you
4 find the defendant guilty. Count number 3,
5 kidnapping in the first degree, you say you
6 find the defendant not guilty. Count number
7 4, kidnapping in the first degree, you say
8 you find the defendant not guilty. Count
9 number 5, kidnapping in the first degree, you
10 say you find the defendant guilty. Count
11 number 6, kidnapping in the first degree, you
12 say you find the defendant guilty. Count
13 number 7, rape in the first degree, you say
14 you find the defendant guilty. Count number
15 8, rape in the first degree, you say you find
16 the defendant guilty. Count number 9,
17 kidnapping in the second degree, you say you
18 find the defendant guilty. Count number 10,
19 sexual abuse in the first degree, you say you
20 find the defendant guilty. Count number 11,
21 sexual abuse in the first degree, you say you
22 find the defendant guilty. Count number 12,
23 criminal possession of a weapon in the second
24 degree, you say you find the defendant
25 guilty.

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Proceedings

1156

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Juror number 1, is that your verdict?

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JUROR #1: Yes.

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THE CLERK: Juror number 2, is that your
5 verdict?

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JUROR #2: Yes.

7

THE CLERK: Juror number 3, is that your
8 verdict?

9

JUROR #3: Yes, it is.

10

THE CLERK: Juror number 4, is that your
11 verdict?

12

JUROR #4: I guess it is.

13

THE CLERK: Juror number 5, is that your
14 verdict?

15

JUROR #5: Yes.

16

THE CLERK: Juror number 6, is that your
17 verdict?

18

JUROR #6: Yes.

19

THE CLERK: Jury number 7, is that your
20 verdict?

21

JUROR #7: Yes.

22

THE CLERK: Jury number 8, is that your
23 verdict?

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JUROR #8: Yes.

25

THE CLERK: Jury number 9, is that your

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Proceedings

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verdict?

JUROR #9: Yes.

THE CLERK: Juror number 10, is that
your verdict?

JUROR #10: Yes.

THE CLERK: Juror number 11, is that
your verdict?

JUROR #11: Yes.

THE CLERK: Juror number 12, is that
your verdict?

JUROR #12: Yes.

THE CLERK: The jury has been polled and
the verdict is unanimous.

THE COURT: You want to reserve any
motions?

MR. SCHECTER: I will reserve motions
until the day of sentence.

THE COURT: Ladies and gentlemen, I will
excuse you now with the thanks of the Court
and the thanks of the people of the State of
New York and the County of Queens. It's only
because we have people like you who are
willing to give of your time to sit as jurors
in cases like this that eventually these

1 Proceedings 1158

2 cases are resolved. I also told the
3 alternate jurors the same thing.

4 With the thanks of the Court you're
5 discharged. And go back to do your ordinary
6 business and we will give you your diplomas
7 and the thanks of the Court. You're excused.

8 (The jury left the courtroom.)

9 THE COURT: Date for sentencing.

10 THE CLERK: It's three weeks.

11 THE COURT: Three weeks I will be on
12 vacation.

13 THE CLERK: Okay. Mr. Zheng, please
14 stand up, sir. How old are you, sir?

15 THE DEFENDANT: 27.

16 THE CLERK: Date of birth?

17 THE DEFENDANT: March 27, '68.

18 THE CLERK: Where were you born, sir?

19 THE DEFENDANT: Fuchow, China.

20 THE INTERPRETER: F-U-C-H-O-W.

21 THE CLERK: What is your home address
22 here?

23 THE INTERPRETER: I really cannot make
24 out his Chinese pronunciation into the
25 English.

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Proceedings

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THE COURT: The question is what is his address.

THE CLERK: Where does he live?

THE INTERPRETER: I cannot make out his Chinese pronunciation for the English street. 90th Street. That's what he said.

THE CLERK: I can see what is listed in the file, Judge.

Are you a citizen of the United States, sir?

THE DEFENDANT: No.

THE CLERK: Does he have a green card?

THE DEFENDANT: No.

THE CLERK: No green card.

THE DEFENDANT: No.

THE CLERK: And his true name is Hai Guang Zheng.

THE DEFENDANT: Yes.

THE CLERK: We will need a date for sentencing, Judge.

THE COURT: How is the week of August 12th?

MR. SCHECTER: The 15th. That would be convenient.

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Proceedings

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THE COURT: The 15th is good. You want
to reserve your motions?

MR. SCHECTER: Yes, I will reserve my
motions for that day.

THE COURT: Defendant is remanded.

MR. SCHECTER: Your Honor, the one
motion I did make right after the verdict was
rendered. All the other motions I will
reserve.

THE COURT: Yes.

THE CLERK: 8/15. Remand defendant.

THE COURT: Yes. The verdict sheet is
marked Court Exhibit 6. Make it part of the
court file.

(Court Exhibit 6 marked.)

* * * * *

CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT

Debra Dunn
Debra Dunn
Official Court Reporter

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COPY 1
3/9/96

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM: PART K-25

-----X
THE PEOPLE OF THE STATE OF NEW YORK : Indictment No.
3282/95

-against-

HAI GUANG ZHENG, : KIDNAP 1

Defendant. : Sentence

-----X
125-01 Queens Boulevard
Kew Gardens, New York 11415

August 15, 1996

B E F O R E:

HONORABLE STANLEY KATZ

Justice

A p p e a r a n c e s:

HONORABLE RICHARD A. BROWN
District Attorney - Queens County
125-01 Queens Boulevard
Kew Gardens, New York 11415
BY: SCOTT KESSLER, ESQ.
Assistant District Attorney

DONALD SCHECHTER, ESQ.
Attorney for the Defendant
Ten Cutter Mill Road
Great Neck, New York 11021

ALSO PRESENT:

Yi Wan, Mandarin Interpreter

* * *

KARYN S. GUTKIN
Senior Court Reporter

1 Sentence - H. Zheng

2 COURT CLERK: This is calendar six,
3 Indictment number 3282 of '95, People versus
4 Hai Guang Zheng.

5 Bring out Hai Guang Zheng first.

6 COURT CLERK: Let the record also reflect
7 the presence of the official Mandarin
8 interpreter.

9 THE INTERPRETER: Yi Wan.

10 (Whereupon, the defendant enters the
11 courtroom.)

12 COURT CLERK: Good afternoon. For the
13 record, what is your name.

14 THE DEFENDANT: Pardon me?

15 COURT CLERK: What is your name, sir?

16 THE DEFENDANT: Hai Guang Zheng.

17 COURT CLERK: Your appearances, counsels.

18 MR. SCHECHTER: Donald Schechter, Ten
19 Cutter Mill Road, Great Neck, New York.

20 MR. KESSLER: Scott Kessler, for the People
21 of the State of New York.

22 COURT CLERK: Thank you.

23 THE COURT: This case is on for
24 sentencing. Are both sides ready for
25 sentence?

1 Sentence - H. Zheng

2 MR. SCHECHTER: Your Honor, I had reserved
3 my motions at the end of the trial till today.

4 THE COURT: Yes.

5 MR. SCHECHTER: Your Honor, at this time,
6 after reviewing all the testimony and evidence
7 and the jurors' verdict, I asked you to set
8 aside the verdicts, as the verdicts were
9 against the weight of the evidence, especially
10 as to the kidnapping counts, the rape counts,
11 the sexual abuse counts and the criminal
12 possession of a weapon in the second degree
13 count.

14 As to the weapon count, your Honor, there
15 was never any showing that that was the weapon
16 that was used, your Honor, nobody ever
17 identified it.

18 As to the kidnapping counts, your Honor,
19 there was no showing that there was any intent
20 to compel a third person to pay/deliver money
21 or property for ransom by my client or anyone
22 acting in concert, on the first two counts.

23 Or on the intent to violate or abuse
24 either of the two women in the third or fourth
25 counts.

1 Sentence - H. Zheng

2 That he never intended to terrorize the
3 two females under the amended fifth and sixth
4 counts.

5 Your Honor, and as such, as to the rape,
6 your Honor, I believe the evidence was also
7 insufficient. I ask you to overturn the
8 verdicts.

9 THE COURT: Mr. Kessler?

10 MR. KESSLER: Yes, your Honor. I rely on
11 the arguments that I made at the time of
12 defense counsel's motions at the end of my
13 case and at the end of the entire case.

14 I believe there is sufficient evidence to
15 convict the defendant, based on the verdicts,
16 of each and every count on the indictment; the
17 jury came back with all ten.

18 And I rely on the statements with respect
19 to the witnesses with regard to that.

20 THE COURT: Your motion is denied.

21 MR. SCHECHTER: Exception taken.

22 THE COURT: Other than that, you're ready
23 for sentence?

24 MR. SCHECHTER: Yes.

25 MR. KESSLER: Yes.

1 Sentence - H. Zheng

2 THE COURT: You move the case for
3 sentence?

4 MR. KESSLER: I move the indictment before
5 the Court for sentencing, at this time.

6 THE COURT: That's Indictment 3282 of '95.

7 MR. KESSLER: That's correct.

8 THE COURT: Does anybody want to say
9 anything before I impose sentence?

10 MR. KESSLER: Yes, People would like to be
11 heard regarding sentencing.

12 THE COURT: Yes?

13 MR. KESSLER: With regard to sentencing in
14 this case, the defendant has been convicted of
15 a total of 12 separates counts before a jury.

16 With regard to the overall acts of this
17 defendant, your Honor, these acts of
18 kidnapping two women from the airport, taking
19 these two women and repeatedly raping them,
20 holding them for over a 24-hour period,
21 holding them for ransom, is one of the most
22 heinous crimes that you can possibly have in
23 this county.

24 These women were terrorized by the
25 defendant's actions. One of the counts that

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2 the jury convicted the defendant of was
3 kidnapping with intent to terrorize.

4 The women were taken as they flew in our
5 county's airport at Kennedy. Their car was
6 cut off, and at that point in time the
7 defendant and another accomplice took these
8 two women and one of their husbands at
9 gunpoint.

10 During that period of time, they demanded
11 documents from the women. And at that point
12 in time, the defendant knew, in fact, he had
13 kidnapped the wrong people - he had planned on
14 kidnapping someone else - and that point in
15 time came before these women were ever raped,
16 terrorized for 24 hours.

17 This defendant knew he had kidnapped the
18 wrong people. Instead of letting them go, he
19 held these women. Took the husband of one of
20 these women and dropped him off in an area of
21 Brooklyn and demanded that he call him and in
22 return have an amount of \$30,000 for the
23 release of these two women.

24 The women were then taken to a location in
25 Queens County where they were held against

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their will at gunpoint for almost two days. Phone calls were being made back and forth by this defendant to the family, and during those phone calls he threatened to kill the women if the money was not paid.

So not only was he aware that he had kidnapped the wrong people, not only did he take the family and separate the two. A point in time comes where he starts making phone calls to the victims' family, telling the family that he will kill both women.

He goes to another extreme now, he has these two women in his apartment, he is demanding money, and now he goes and rapes both women.

The jury in this case, your Honor, came back with four separate A-1 felonies-- I'm sorry, four separate A-1 felonies.

The only A-1 felonies that they did not come back with was the kidnapping with intent to sexually abuse. I had spoken to the jury afterwards, and it was their understanding that they didn't feel at the time the defendant kidnapped these women it was their

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intent to sexually abuse them, but it was an afterthought.

Based on the fact that he has been convicted of kidnapping in the first degree with intent to demand a ransom, the first count in this indictment, on Liu Yan Wu, on the first count, the People would ask for a sentence of 25 years to Life, pursuant to the fact that it is an A-1 felony.

The second count he has been convicted on was kidnapping with regard to the woman named Jin Hao Liu, which is a separate and distinct kidnapping.

The case law, under my understanding under the People versus Diaz, which is at 210 AD2d 249, holds that the imposition of consecutive sentencing was proper, since the kidnapping of the two complainants were two separate acts arising from the same set of circumstances.

So it's my understanding, based upon the case law, this Court has the opportunity to sentence the defendant on consecutive acts, since they were two separate women. So I would ask for a consecutive sentence on the

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2 second count of 25 years to Life.

3 With regard to the counts of kidnapping
4 with intent to terrorize, the defendant stands
5 convicted of the two women that I mentioned
6 before with those counts. That is based upon
7 the defendant's actions of raping the women,
8 holding them without ransom, having separated
9 them from the one woman's husband.

10 It appears, your Honor, that that count
11 would have to run concurrently, since that is
12 an overall act that defendant was committing
13 throughout the course of this transaction. So
14 the People would ask for a sentence of 25
15 years to Life, to run concurrently on both of
16 those counts, with the kidnapping with intent
17 to terrorize.

18 THE COURT: Which counts were those, is
19 that five and six?

20 MR. KESSLER: That would be correct.

21 THE COURT: Go ahead.

22 MR. KESSLER: With regard to the seventh
23 and eighth counts, which is rape in the first
24 degree, based upon the jury's verdict, your
25 Honor, it appears that the jury believed that

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2 the defendant's intent at the time of
3 kidnapping them was not to rape them, it
4 appears that this was, in fact, an
5 afterthought.

6 It is a separate and totally distinct act
7 by the defendant. It is not an element of any
8 other crime he has been convicted for, it's a
9 separate and distinct act. The defendant
10 should not benefit from that by having
11 concurrent time on that.

12 Based upon the facts before this Court,
13 the People would ask for the maximum sentence
14 of eight and a third to 25 years, for each of
15 the two women, to run consecutive to each
16 other and to run consecutive to the total of
17 25 or 50 to Life that was on the first and
18 second counts.

19 With regard to the kidnapping in the
20 second degree, that act was regarding another
21 separate complainant, Guo Bang Liu, who was
22 the husband of one of the other two
23 complainants.

24 Again, that is a separate person and a
25 separate act, that's a Class B felony, in